SITE REMEDIATION PROGRAM

Underground Storage Tanks

Proposed Readoption with Amendments: N.J.A.C. 7:14B

Proposed New Rules: N.J.A.C. 7:14B-15

Authorized By: Bradley M. Campbell, Commissioner

Department of Environmental Protection

Authority: N.J.S.A. 58:10A-21 et seq., and 13:1D-9.

Calendar reference: December 2, 2002 at 34 N.J.R.

DEP Docket Number: 30-02-10/156

A public hearing concerning this proposal will be held on December 23, 2002, starting at 10 AM at:

Public Hearing Room
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey

Submit written comments by (no later then 30 days after publication of this proposal) to:

Karen Hershey, Esq.
Attn: DEP Docket Number 30-02-10/156
Office of Legal Affairs
NJ Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402

The Department strongly recommends that commenters submit comments on diskettes as well as on paper. The Department will be able to upload the comments onto its office automation equipment, thereby saving the Department considerable time in not having to retype the comments. The Department will use the paper version of the comments to ensure that uploading was accomplished successfully. Submission of the diskette is not a requirement. The

Department will accept all comments submitted in writing prior to the end of the comment period.

The Department prefers Microsoft Word 6.0 or above, however other word processing software that can also be read or used by Microsoft Word 6.0 is acceptable. Macintosh formats should not be used.

Text enhancements such as underlines, bold, etc., are often not converted from one software to another. Therefore, when suggesting text revisions involving additions/ deletions, the revised text should be presented without enhancements, as they would appear in the rule.

Comments on the rule summary and impact statements should be included with the comments on the pertinent section of the rule text wherever possible to eliminate duplicate comments and facilitate the Department's task in organizing and responding to comments. Since comments will be sorted electronically, the following format should be used for each comment:

Citation COMMENT: Comment text. (Company name). For example:

7:14B-15.1(c) COMMENT: The time allowed to obtain financial assurance should be increased from 120 days to 180 calendar days. (ABC Corporation)

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Underground Storage Tank Rules (UST Rules), N.J.A.C. 7:14B, are scheduled to expire on October 22, 2002. This expiration date has been extended by 180 days to April 20, 2003 pursuant to N.J.S.A. 52:14B-5.1c. As required by the Administrative Procedure Act, the Department of Environmental Protection (the Department) has evaluated these rules and

has determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated, as modified by the amendments proposed herein and discussed below.

The Underground Storage of Hazardous Substances Act (the Act), N.J.S.A. 58:10A-21 et seq.) was first enacted in 1986. The purpose of the Act was to ensure the proper operation and management of underground storage tanks. N.J.A.C. 7:14B, the rules which implement the Act became effective in 1987. The rules set forth the Department's requirements for underground storage tank operation and management. N.J.A.C. 7:14B contains requirements that tanks be registered with the Department, and meet certain upgrade requirements to prevent discharges to the environment. Tank closure and remediation requirements for discharges from underground storage tanks are also provided in the rule.

In a separate rulemaking, the Department has proposed additional amendments to this chapter concerning civil administrative penalties. (See November 4, 2002 New Jersey Register at 34 N.J.R. , proposed readoption of Oversight rules, N.J.A.C. 7:26C.)

Financial Assurance

On October 26, 1988, the United States Environmental Protection Agency (EPA) adopted regulations that require owners and operators of Federally regulated underground storage tanks to demonstrate financial responsibility for discharges arising from the operation of petroleum underground storage tanks. See final rule for Underground Storage Tanks Containing Petroleum - Financial Responsibility Requirement at 40 CFR Part 280. EPA based the amount of assurance necessary on discharge occurrence rates, probability of tank failures, cleanup costs and frequency of third party claims.

In the Spill Compensation and Control Act, the Legislature directed the Department to adopt regulations that require the owners and operators of State regulated tanks to maintain financial responsibility for remedial action and for the compensation of third parties for bodily injury and property damage caused by a discharge (N.J.S.A. 58:10A-25a(8)). There are currently

over 10,000 facilities with regulated underground storage tanks in New Jersey that are registered with the Department.

The universe of underground storage tanks regulated by New Jersey and the Federal government differ. More than 80 percent of the registered underground storage tanks in New Jersey are also regulated under Federal law (40 C.F.R. 280). New Jersey regulates all the same tanks that EPA does plus tanks containing heating oil used for on site consumption at non-residential sites in tanks that are 2,000 gallons or greater. In addition, New Jersey regulates all underground storage tanks containing hazardous waste under this chapter while EPA regulates this category of tanks under RCRA. A full description of tanks regulated by New Jersey is provided at N.J.A.C. 7:14B-1.4.

This proposal does two things with regard to financial responsibility. This rulemaking requires the owners and operators of the remaining 20 percent of underground storage tank facilities to maintain financial responsibility under State law; and it also requires the Federally regulated tanks to maintain financial responsibility under Federal law. A further explanation of the State required amount of financial responsibility assurance can be found in the subchapter summary for N.J.A.C. 7:14B-15, below. These facilities, which are only subject to State law (N.J.S.A. 58:10A-21 et seq.) with regard to financial responsibility assurance, include the owners and operators of non-residential underground storage tanks with an aggregate capacity greater than 2000 gallons containing heating oil for onsite consumptive use and tanks of any size that contain non-petroleum hazardous substances and hazardous wastes. Additionally, this rulemaking will allow the owners and operators who are subject to Federal financial responsibility requirements to continue to use the same financial assurance mechanism to satisfy both State and Federal law.

The Department is proposing new regulations at subchapter 15, Financial Responsibility Requirements, that are largely based on the Federal rule at 40 C.F.R. 280. Subchapter 15 sets forth the obligations of all owners and operators of underground storage tanks to provide financial assurance for performing remediation and compensating third parties for bodily injury

and property damage caused by a discharge. Subchapter 15 provides general financial responsibility requirements, the amount of financial responsibility required for the various types of tanks and tank facilities and the incorporation of the Federal rule (40 C.F.R. 280 Subpart H) by reference. The Department proposes to adopt 40 C.F.R. 280 Subpart H in its entirety for Federally regulated petroleum tanks. In addition, the Department proposes to adopt the majority of 40 C.F.R. 280 Subpart H, with several noted exclusions, for all other regulated tanks.

Subchapter Summaries

The following is a summary of the provisions of each subchapter within N.J.A.C. 7:14B proposed for readoption as well as a description of the proposed amendments.

Subchapter 1. General Information, describes the scope of the chapter which constitutes the Department's rules for underground storage tank operation and management. This subchapter contains definitions of terms and certification requirements for anyone making a submission to the Department.

The Department proposes to make the following amendments to subchapter 1: The Department proposes to add N.J.A.C. 7:14B-1.3(a)9 and 10 to include the purpose of new subchapter 15 which is to establish financial responsibility assurance requirements for regulated underground storage tank. N.J.A.C. 7:14B-1.3(a)9 will be recodified as N.J.A.C. 7:14B-1.3(a)10 accordingly.

The Department proposes to update the title of the reference document noted in the definition of "abandon in place" or "abandonment in place" at N.J.A.C. 7:14B-1.6, Definitions.

The Department proposes to add and amend definitions at N.J.A.C. 7:14B-1.6. The term "annual aggregate" is defined as the total remediation costs incurred within one year for all underground storage tank system discharges covered by a single financial instrument. A "dispenser sump" is a liquid tight container designed to contain leaks from dispensers, any

pumps and associated fittings. The Department proposes to add requirements for inspection and cleaning of dispenser sumps at N.J.A.C. 7:14-5.1 (d).

The Department proposes to amend the definition of the term "liquid" with a correction of the reference number and title for the ASTM Test for Penetration of Bituminous Materials report. The definition of "occurrence" is intended to assist in the understanding of these regulations. "Occurrence" means a discharge from an underground storage tank. The term "petroleum marketing facility" refers to facilities where petroleum is produced or refined, or facilities that sell or transfer petroleum to other petroleum marketers or to the public. The term "piping sump" refers to a liquid tight container designed to contain leaks from tank top fittings, pumps and associated equipment. The Department has added requirements for inspection and cleaning of piping sumps at N.J.A.C. 7:14-5.1 (d).

The Department proposes to amend N.J.A.C. 7:14B-1.7(b) to require anyone submitting certifications or reports to date their submission. The Department has encountered problems with undated submissions.

The Department proposes to add a N.J.A.C. 7:14B1.7(f) through (h) to provide new certification language. N.J.A.C. 7:14B1.7(f) provides certification language specifically for the certified Cathodic Protection Specialist submitting a cathodic protection permit application in accordance with N.J.A.C.7:14B-10.3(b)5. N.J.A.C. 7:14B1.7(g) provides certification language for any individual that is certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13 who is conducting or directing the onsite activities and preparing documents in accordance with N.J.A.C. 7:14B-8.5 or 9.5. N.J.A.C. 7:14B1.7(h) provides certification language for any individual certified in accordance with N.J.A.C. 7:14B-13 who prepares documents pursuant to N.J.A.C. 7:14B-8.5 or 9.5 for another certified Subsurface Evaluator who conducted or directed remediation activities. These amendments will ensure that all submissions to the Department are certified by the persons who have the responsibility for, and the knowledge of, activities conducted at the site.

Subchapter 2. Registration Requirements and Procedures, sets forth the requirements and the procedures for registering underground storage tanks. Included in this subchapter are the procedures for transferring tank registration due to a change in ownership and making changes to the registration due to modifications to the underground tank facility.

The Department proposes to amend N.J.A.C. 7:14B-2.2 Registration and certification procedures to provide a new mailing address for the submission of all registration and certification forms.

The Department proposes to amend N.J.A.C. 7:14B-2.7(c)1 and 2, Denial or revocation of registration, to include a correct reference to N.J.A.C. 7:14B-2.7. The existing rule references N.J.A.C. 7:14B-2.8. Because N.J.A.C. 7:14B-2.8 is reserved, the citation is inappropriate.

Subchapter 3. Fees, sets forth the Department's fees for registering underground storage tanks, program oversight cost fees for the Department's review of various permits and reports, and provides the procedure for paying fees. No amendments are proposed.

Subchapter 4. Underground Storage Tank Systems: Design, Construction and Installation, provides performance standards for new tanks and requirements for upgrading existing tanks. The Department proposes to update the references for design, construction and installation of new underground storage tank systems at N.J.A.C. 7:14B-4.1(e) through (k). In addition, the Department proposes to update the references for upgrading existing underground storage tank systems at N.J.A.C. 7:14B-4.2(e)1 and 3, and 4.2(f)4. The Department has also added a new reference to the Underwriters Laboratories Standard 58 to N.J.A.C. 4.2(e)3 in order to include all accepted options for complying with the requirements of N.J.A.C. 7:14B-4.2(b)

The Department proposes to delete all references to the December 22, 1998 deadline for compliance. The first reference to this date is at N.J.A.C. 7:14B-4.2(a). Additional references to the 1998 deadline are at 6.1(d) and (e), 6.2(a)1ii, 6.3(a)1 and 9.1(a)5. References to this deadline are deleted because the deadline has passed. By removing the deadline, the rule is now clear that

all tank systems must be in compliance with upgrade and operational leak detection requirements.

Subchapter 5. General Operating Requirements, set forth the Department's requirements for operating underground storage tanks including requirements for spill and overfill control, corrosion protection and recordkeeping.

The Department proposes to add N.J.A.C. 7:14-5.1(d) to require a visual inspection of spill catchment basins before every delivery and a visual inspection of spill catchment basins, dispenser sumps and piping sumps every 30 calendar days to keep them clean of product, water and debris. The visual inspection is also required to check for evidence of cracks, holes and loose fittings, which may cause a discharge from the spill containment equipment. The Department has been involved in numerous cases where leaking sumps and spill catchment basins resulted in discharges that contaminated ground water. These requirements have been added to ensure that spill catchment basins and sumps are kept empty and intact and therefore able to serve the purpose for which they were intended: to hold spills which would otherwise discharge to the environment and to remove any spilled material promptly.

The Department proposes to update the references for the repair of underground storage tank systems at N.J.A.C. 7:14B-5.2(a)2ii and 5.4(c)3. In addition, the Department proposes to update the Department's hotline number at N.J.A.C. 7:14B-5.5(a)1.

The Department proposes to amend N.J.A.C. 7:14B-5.6 to require owners and operators to maintain documentation of spill catchment basin inspections and cleaning conducted pursuant to N.J.A.C. 7:14B-5.1(d)3.

Subchapter 6. Release Detection, contains the general and specific requirements for tanks containing petroleum and waste oil, and tanks containing other hazardous substances, and tanks in well restriction areas. This subchapter includes methods of release detection for tanks and piping, and recordkeeping requirements. The Department proposes to delete N.J.A.C.

7:14B-6.1(d) which includes reference to the December 22, 1998 deadline. N.J.A.C. 7:14B-6.1(e) will be recodified as (d) accordingly. The December 22, 1998 deadline has also been deleted from N.J.A.C. 7:14B-6.2(a)1ii and 6.3(a)1.

Subchapter 7. Release Reporting and Investigation, sets forth requirements for reporting releases to the Department and requirements for investigating a suspected release. This subchapter also contains sampling and analytical requirements for confirming a release. The Department proposes to update the Department's hotline number at N.J.A.C. 7:14B-7.3(a).

Subchapter 8. Remediation Activities, contains the requirements regarding remediation in response to discharges from underground storage tanks. The Department proposes to amend existing N.J.A.C. 7:14B-8.6(a) and delete 8.6(b). Amended 8.6(a) requires the owner or operator of a facility to remediate all discharged hazardous substances pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. The Technical Requirements for Site Remediation set forth the Department's minimum remediation requirements for all contaminated sites, including underground storage tanks.

Subchapter 9. Out-of-Service Underground Storage Tank Systems and Closure of Underground Storage Tank Systems, contains the requirements for closing different types of underground storage tanks and sets forth recordkeeping and reporting requirements. The Department proposes to delete reference to the December 22, 1998 tank upgrade deadline from N.J.A.C. 7:14B-9.1(a)5 for the reasons discussed earlier. The Department proposes to update the reference for the requirements for out of service tanks at N.J.A.C. 7:14B-9.1(b).

Subchapter 10. Permitting Requirements for Underground Storage Tank Systems, states that the owner or operator of a underground storage tank must obtain a permit from the Department prior to repair, installation, substantial modification or upgrade of an underground storage tank system. This subchapter contains the procedures for the Department's review, granting or denial of permit applications. The Department proposes to add N.J.A.C. 7:14B-10.1(b)5 to clarify that the installation of spill catchment basin for spill prevention equipment

does not require the owner or operator to obtain a permit from the Department. N.J.A.C. 7:14B-10.1(b)5 also requires, prior to the installation of a spill catchment basin, that the owner or operator investigate the area for previous spills. If a discharge is identified it must be remediated in accordance with subchapters 7 and 8. In addition, the Department proposes to update the Department's hotline number at N.J.A.C. 7:14B-10.2(b)1i.

Subchapter 11. Municipal Ordinances, states that no municipal, county or political subdivision can enact any law or ordinance that supercedes this chapter unless they are more environmentally protective. No amendments are proposed.

Subchapter 12. Penalties, Remedies and Administrative Hearing Procedure, sets forth the Department's protocols for assessing penalties for non-compliance with this chapter and provides the administrative hearing procedures when the Department denies or revokes a permit, registration or certification. No amendments are proposed.

Subchapter 13. Certification of Individuals and Business Firms, sets forth the Department's procedures to certify individuals and businesses to provide services on an underground storage tank systems. No amendments are proposed.

Subchapter 14. Confidentiality, provides the Department's procedures on the scope and exchange of information that is deemed to be confidential. No amendments are proposed.

The Department proposes to add a new subchapter 15, Financial Responsibility Requirements, to set forth procedures for the creation, maintenance, and access of funds dedicated to the remediation of a discharge from a regulated underground storage tank and for the compensation of third parties for bodily injury and property damage caused by such a discharge.

N.J.A.C. 7:14B-15.1(a) establishes subchapter 15 as the financial responsibility assurance requirements for remediating a discharge and compensating third parties for bodily injury and property damage caused by a discharge from an underground storage tank system.

N.J.A.C. 7:14B-15.1(b) states that owners and operators of tank systems subject to Federal financial responsibility assurance requirements have the continuing responsibility to comply with 40 C.F.R. Part 280 Subpart H. Continuing to comply with the Federal requirements will satisfy both State and Federal financial assurance requirements.

N.J.A.C. 7:14B-15.1(c) requires the owner or operator of an underground storage tank that is subject to State financial responsibility assurance (N.J.A.C. 7:14B) but not the Federal financial responsibility assurance (40 C.F.R. Part 280 Subpart H), to obtain financial assurance within 120 days after the effective date of this rule. Owners and operators are required to use the financial assurance mechanisms contained in EPA's Financial Responsibility Regulations at 40 C.F.R. Part 280 Subpart H, which the Department is proposing to incorporate by reference at N.J.A.C. 7:14B-15.3(b) with the noted exclusions outlined at N.J.A.C. 7:14B-15.3(c).

N.J.A.C. 7:14B-15.1(d) states that State and Federal government entities are exempt from the requirements of this subchapter. This is consistent with the Federal program and has been extended also to the State rule.

N.J.A.C. 7:14B-15.1(e) states that if the owner and operator of an underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility. However, both the owner and the operator are responsible in the event of noncompliance.

N.J.A.C. 7:14B-15.1(f) states that if separate financial mechanisms are used to comply with the amounts of financial assurance listed at N.J.A.C. 7:14B-15.2 for different underground storage tank systems, the amount of financial assurance that is required shall be based on the annual aggregate for the number of tanks that are covered by separate financial mechanisms.

N.J.A.C. 7:14B-15.1(g) describes the conditions when the owner and operator of a tank system is no longer required to maintain financial responsibility assurance. Financial responsibility is not required after the owner or operator has received a no further action letter from the Department for closure of the tank, and a notice that each third party claim for damages resulting from a discharge is resolved.

N.J.A.C. 7:14B-15.1(h) requires the owner and operator to identify the financial assurance mechanism being used to comply with this subchapter on the New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.2. The owner and operator are required to maintain evidence of financial assurance with any supporting documentation at the facility and the owner and operator's place of business. In addition, because the Department may need to verify the type or the amount of financial assurance being used to comply with this chapter, N.J.A.C. 7:14B-15.1(h) states that the Department may request this information from the owner or operator at any time.

N.J.A.C. 7:14B-15.1(i) requires financial institutions issuing any form of financial assurance pursuant to this chapter to notify the Department within 30 days after the cancellation or expiration of financial assurance mechanisms. Notification must include the name of the insured policy holder, the policy number as applicable and the address of all sites covered by the financial mechanism.

N.J.A.C. 7:14B-15.2, Amount and scope of financial responsibility, sets forth the amount of assurance required on a per occurrence and annual aggregate basis. The amount of assurance required is based on data collected by both the Department and EPA and provides a level of assurance that is anticipated to cover the costs of the majority of underground storage tank discharge occurrences. The level of assurance required takes into consideration facility use, substance stored, and potential volume of a discharge.

The Department proposes to require petroleum marketing facilities to maintain $1,000,000 of financial assurance for per occurrence amounts at N.J.A.C. 7:14B-15.2(a)1. The amount of assurance is consistent with the amount that EPA requires for petroleum marketing facilities.

Because EPA excludes tanks containing heating oil used for on-site consumption, non-petroleum hazardous substances and other substances regulated by New Jersey, the Department relied on its own experience to develop levels of assurance appropriate for tanks that are only regulated by State law at N.J.A.C. 7:14B-15.2(a)2 and 3. To determine the amount of financial assurance sufficient to respond to a discharge from underground storage tanks containing heating oil and other regulated substances, the Department considered the fate and transport of these substances in the environment should a discharge occur.

Heating oils (middle-heavy distillates), due to their chemical composition, tend to be thicker than gasoline, and therefore do not move as quickly through soil. Heating oils tend not to evaporate or dissolve readily and tend to float on ground water. The effects of a fuel oil discharge are usually limited to the surrounding soil of a leaking underground storage tank. However, in worst case scenarios, large volume discharges, fuel oil may travel to underlying ground water, nearby subsurface structures such as basements or wells, or to nearby surface water bodies such as streams, lakes or rivers. Because most discharges of heating oil do not fall into these worst case scenarios, the Department determined that the per occurrence amount of $500,000, proposed at N.J.A.C. 7:14B-15.2(a)2, would be sufficient in most cases.

Liquid hazardous chemicals stored in underground storage tanks can vary in density, viscosity and water solubility. Discharged liquid chemicals with specific gravity less than one float on the ground water. Chemicals with specific gravity greater than one will sink below the water table. These more dense chemicals can be particularly difficult to remediate especially in a fractured bedrock aquifer. Some hazardous liquids, such as methanol and acetone, mix easily with water. They tend to dissolve easily and migrate quickly through the aquifer. Liquid chemicals not freely miscible with water can still dissolve to an appreciable extent in ground

water. Contaminated ground water can be harmful to human health and the environment. Remediation of contaminated ground water associated with these hazardous chemicals tend to be lengthy and costly. In worse case scenarios, remediation may take decades and cost millions of dollars. For these reasons, the Department determined that a $1,000,000 per occurrence limit, proposed at N.J.A.C. 7:14B-15.2(a)3, is appropriate for tanks storing liquid hazardous chemicals.

The Department proposes N.J.A.C. 7:14B-15.2(b) to set forth financial assurance in annual aggregate amounts. The amounts are based on the number of underground storage tanks at a facility and are consistent with the EPA requirements.

The Department proposes N.J.A.C. 7:14B-15.2(c) to require the owners and operators to review the amount of financial assurance needed whenever they acquire or install additional tanks to ensure that the proper amount of financial assurance is maintained.

The Department proposes N.J.A.C. 7:14B-15.2(d) to require the owners and operators to adjust the amount of financial assurance needed and notify the Department of Environmental Protection within 30 days after the acquisition or installation of additional tanks. Owners and operators must notify the Department of changes of the amount of assurance needed. Notification must be done by amending the New Jersey Underground Storage Tank Facility Certification Questionnaire in accordance with N.J.A.C. 7:14B-2.4 and submitting it to the Department.

N.J.A.C. 7:14B-15.3, Incorporation of the Code of Federal Regulations by reference, establishes the Department's intent to adopt the Federal financial responsibility regulations (40 C.F.R. Part 280 Subpart H) through incorporation by reference. The Federal regulations require Underground Storage Tank owners and operators demonstrate the ability to cleanup leaks and compensate third parties for bodily injury and property damage resulting from leaking Underground Storage Tank systems. The Federal regulations provide various options to demonstrate financial responsibility and amounts of coverage based on type of business, throughput and number of Underground Storage Tanks owned. By having a financial

responsibility mechanism in place, the Federal regulations intend that the Underground Storage Tank owner and operator can respond to cleanup activities quickly to prevent the spread of contamination and damage to the environment and human health. The Federal rule was promulgated on October 26, 1988 and amended on Feb. 28, 1994. Those regulations will be both effective and operative under New Jersey law when the new rules are promulgated.

N.J.A.C. 7:14B-15.3(a) states that, unless specifically excluded by these rules, all notes, comments, appendices, diagrams, tables, forms, figures and publications that are part of the Federal rule are also incorporated by reference.

N.J.A.C. 7:14B-15.3(b) requires the owners and operators of Federally-regulated tanks to comply with 40 C.F.R. 280 Part H in its entirety. Owners and operators of Federally regulated tanks have needed to comply with the Federal rule since it was originally promulgated on October 26, 1988. The only difference resulting from this rulemaking is that EPA will no longer be the sole implementing agency.

N.J.A.C. 7:14B-15.3(c) requires the owners and operators of State regulated tanks to comply with the Federal financial responsibility rule with several noted exclusions. The sections of the Federal rule that are being excluded from incorporation are provided below:

Federal Citation 40 C.F.R.	Title of Section
280.98	Surety bond
280.100	Use of State required mechanism
280.101	State fund or other State assurance
280.106(d)	Local government guarantee

The Department has chosen to exclude section 40 C.F.R. 280.98, Surety bond because surety bonds have not been an effective type of financial assurance for other contaminated sites in New Jersey. The exclusion of the surety bond is based on the Department's experience with other sites holding this type of financial assurance. The responsibility to remediate a site falls to

the issuer of the surety bond if the owner or operator of the tank system fails to conduct a required remediation. Often, financial institutions that issue surety bonds are not familiar with the administrative and technical requirements of site remediation resulting in an inefficient, lengthy and ultimately more costly remediation.

The Department has chosen to exclude 40 C.F.R. 280.100, 101 and 106(d) because these financial mechanisms involve the State in the process of obtaining and maintaining financial assurance for an owner or operator. The Department believes that it is inappropriate for New Jersey to be involved in obtaining or maintaining financial assurance because it would be a conflict for the Department as the implementing agency. The Department also believes that there are sufficient types and sources for financial assurance mechanisms available without the excluded subsections.

Unlike the requirements for Federally regulated tanks, N.J.A.C. 7:14B-15.3(c) is a new requirement for owners and operators of tanks that are solely regulated by the State. The Department intends to hold the owners and operators of State regulated tanks to the same requirements as those that have been in effect for the owners and operators of Federally regulated tanks. The owners and operator of tanks that are regulated by both the State and Federal governments, must comply with the Federal requirements.

As part of the incorporation by reference, the Department proposes to replace certain terms that appear in the Federal rule to clarify that the Department is also now an implementing agency. N.J.A.C. 7:14B-15.3(d) requires that terms used in the Federal rule be replaced with the corresponding New Jersey terms. For example when the term “name of State” appears in the Federal rule, it is replaced by “New Jersey”; when the term “State implementing agency” appears in the Federal rule, it is replaced by “Department of Environmental Protection”; when the term “Director” or “Director of the implementing agency” appears in the Federal rule, it is replaced by “DEP Commissioner”.

The Department proposes to prospectively incorporate by reference at N.J.A.C. 7:14B-15.3(e) all future new rules, supplements, amendments, repeals, or other changes of the Federal financial responsibility regulations at 40 C.F.R. Part 280 Subpart H. Prospective incorporation by reference is an automatic and continuing administrative process that will allow the Department to mirror the current status of the Federal regulations unless the Department chooses to exercise its discretion to take other regulatory action.

N.J.A.C. 7:14B-15.3(f) provides the inclusion of internal references in the sections of 40 C.F.R. Part 280 Subpart H that are incorporated by reference in this rulemaking.

N.J.A.C. 7:14B-15.3(g) states that provisions of the Federal rule that are excluded by reference are excluded in their entirety, including internal cross references. The excluded provisions are also excluded prospectively.

N.J.A.C. 7:14B-15.3(h) provides that nothing that is incorporated by reference affects the Department's authority to enforce statutes or rules, permits or orders administered or issued by the Commissioner.

N.J.A.C. 7:14B-15.3(i) incorporates new Federal rules, amendments, supplements and other changes at 40 C.F.R. Part 280 Subpart H brought about through administrative or judicial action.

N.J.A.C. 7:14B-15.3(j) provides the incorporation of new Federal rules, amendments and other changes noticed in the Federal Register after January 26, 1998 but prior to the effective date of this rule. The operative date of such amendments is when these proposednew rules are adopted and effective plus 90 days.

N.J.A.C. 7:14B-15.3(k) incorporates new Federal rules, amendments and other changes on or after the effective date of these new rules.

N.J.A.C. 7:14B-15.4, Document availability, describes where copies of the Federal rule are available. Upon proposal of these new rules, 40 C.F.R. Part 280 Subpart H will be available from a variety of sources including the Department's web site, the Site Remediation Program and from the U.S. Government printing office or printing office bookstores, as well as specified public libraries in New Jersey.

Social Impact

The proposed new rules and the provisions being readopted at N.J.A.C. 7:14B will have a beneficial social impact. Discharges from underground storage tank systems have the potential to cause severe harm to public health and safety and the environment. Hazardous substances from underground storage tanks can threaten ground water and potable water sources, create vapor hazards that can have immediate dangers of explosion and long term health risks. Contamination caused by these discharges lowers property values, creates real estate transfer problems and can render land unfit for development and use. Experience with existing N.J.A.C. 7:14B has shown that the underground storage tank system installation and design standards, general operating conditions and closure site investigation requirements all have contributed to the elimination or early detection of discharges to prevent or reduce these negative impacts.

The Department anticipates that the proposed financial responsibility assurance rules from the adoption of subchapter 15 will have a beneficial social impact. The financial responsibility assurance requirements will ensure that tank owners and operators have the fiscal means of meeting their responsibilities related to a discharge so that public funds will not be needed to conduct the remediation or pay injured third parties.

Economic Impact

The amendments and new rules being proposed herein, along with the provisions proposed for readoption, will have a beneficial economic impact. On average, it costs approximately $60,000 to remediate a release from an underground storage tank system. As underground storage tank system owners comply with the corrosion protection requirements of

N.J.A.C. 7:14B-4.1 and 4.2, the number of releases is expected decline also reducing annual cost estimates for remediation. Thus, the readoption of this rule with the proposed and new rules is anticipated to provide an economic benefit to the regulated community due to the prevention of releases.

The performance standards, general operating requirements and monitoring requirements at N.J.A.C. 7:14B-4, 5 and 6 provide the regulated community with a number of options for complying with the corrosion protection and release detection monitoring requirements. These options mean that an owner or operator of an underground storage tank system can choose the most cost effective manner to achieve compliance, thus affording a positive economic impact. Most of the changes being proposed to subchapters 4, 5 and 6, will not impose any new costs on the regulated community, as the changes merely correct dates, references and telephone numbers contained in these subchapters. The Department is proposing a new provision at N.J.A.C. 7:14B-5.1 that requires a visual inspection of spill catchment basins, piping sumps and dispenser pans. This is a recording keeping requirement and is discussed in greater detail in the Regulatory Flexibility Analysis below.

The certification program, at N.J.A.C. 7:14B-13, has helped ensure that the requirements imposed by this chapter and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. are carried out only by competent, experienced individuals and business firms, resulting in the proficient implementation of these requirements. ~~Proficient implementation of New Jersey's underground storage tank requirements is expected to continue to have a positive economic impact on the regulated community. Costs of compliance are minimized as mistakes are reduced and efficiency of implementation is increased.~~ In order to become certified to perform work associated with underground storage tanks, an individual must pay certain fees. For example, individuals are required to apply for certification, pay an application fee of $35.00 and, if fulfilling all prerequisites for certification, pay a certification fee of $250.00. Before renewal of an individual's certification, the individual must also complete a required course on New Jersey Underground Storage Tank Regulations that may cost between $50.00 and $300.00.

All of these costs are for the three-year duration of a certification. The goal is to ensure that the individual remains up to date with the requirements of a particular classification. Although there is a cost to those seeking certification pursuant to N.J.A.C. 7:14B-13, overall costs of complying with the Underground Storage Tank Rules are minimized as the certification program ensures proficient implementation of the rules, thus mistakes are reduced and efficiency of implementation is increased.

The cost of meeting the proposed financial responsibility requirements of this rule will vary depending on several factors including which mechanism is chosen, the size and condition of the facility, and the amount of any deductible. For those owners and operators capable of self-insuring or obtaining a corporate guarantee, the costs incurred could be as low as the administrative costs of preparing a letter from the financial officer and reporting changes to the Department on the New Jersey Underground Storage Tank Facility Certification Questionnaire.

Other mechanisms, such as letters of credit, can cost 1 to 3 percent of the total amount mandated and require collateral almost equal to the amount of assurance required. A letter of credit may, therefore, cost from $5,000 to $60,000 per year, when available. Based on information from the insurance industry, the cost of commercial pollution liability insurance is generally based on a variety of factors such as age and condition of a facility, and will cost between $1,000 to $10,000 per facility annually. Some insurers may require engineering and site inspections prior to issuance of a policy. These costs will be above and beyond the annual premiums associated with maintenance of a valid policy.

Risk retention groups and municipal pools may require initial capitalization contributions by its members in addition to an annual premium. The costs therefore for this mechanism would be similar to commercial insurance with the addition of capitalization costs. If the pool suffers high or unexpected losses, additional capitalization could be needed.

There is a beneficial economic impact of requiring financial assurance to owners and operators of underground storage tanks, the general public, and the environment. The cost of

insurance, compared to the costs of a cleanup or third party damages, makes financial assurances beneficial for owners and operators. The assurance to the public that the means to pay for remediation of discharges is available benefits human health and the environment.

Environmental Impact

The provisions proposed for readoption, and the amendments and new rules will have a positive environmental impact in New Jersey. The environmental impact of discharges from underground storage tanks can seriously impact both ground and surface waters and can cause exposure to hazardous vapors. The far-reaching impacts can affect human health and safety and the environment. In particular, positive environmental impacts will result from the new financial assurance rule requirement proposed today. Environmental impacts from the property damage and remediation costs can range far beyond an owner and operator's ability to pay without a financial assurance mechanism. Therefore, requiring owners and operators of underground storage tank systems to maintain financial responsibility not only protects them from monetary losses, but ensures the community at large of the means for performing timely remediations of discharges. Owners and operators who maintain financial responsibility assurance are more likely to complete a cleanup in accordance with the Department's regulations.

Providers of financial assurance will likely require owners and operators to upgrade tanks and maintain sound tank management protocols before they will provide insurance or other financial assurance. This extra measure of performance and operational oversight will benefit the State program, the environment and insurers.

Federal Standards Analysis

Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include a Federal Standards Analysis in the rulemaking document. The Department has

identified various areas in the promulgated rule and the proposed new rules which exceed the standards set forth in the corresponding Federal provisions.

On September 23, 1988, the EPA published, in the Federal register, regulations governing underground storage tank systems. These rules (40 C.F.R. 280) define what an underground storage tank is, the regulated universe of underground storage tanks, construction standards for new and existing tank systems, monitoring standards for new and existing tank systems, registration requirements for tank systems, operational requirements for tank systems, closure requirements, as well as investigation requirements when tank systems are removed, have discharged or are suspected to have discharged.

The New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., specifies that the standards for new tank construction, release detection monitoring and upgrades of existing tank systems are to be identical to the Federal rule for tanks that are regulated by both the Federal and State governments. The Act requires the Department to develop standards for the construction, installation and operation of new and existing underground storage tank systems which are no more stringent than those set by the EPA for tank systems which are regulated by New Jersey and not the Federal government. The Act authorizes the Department to adopt appropriate standards which may be "more stringent" than those set by the EPA for those underground storage tanks systems which exist within wellhead protection areas. The statute sets the deadlines for compliance with these items to be the same as those set in the Federal rule.

The following discussion provides a subchapter-by-subchapter analysis of the Department's rule proposal as compared to the Federal rules.

Sections of the Federal regulations were incorporated in the rule proposal where appropriate. The sections of the Federal regulations which are incorporated in conformance with P.L. 1994, c.14 (the statutory amendments to N.J.S.A. 58:10A-21 et seq.) are as follows:

Subsection Title	State Citation	Federal Citation

	N.J.A.C. 7:14B	40 C.F.R. 280
Performance Standards for UST Systems	4.1(a)	20(a)-(e)
Upgrading of Existing UST Systems	4.2(a)	21(a)-(d) 4.2(e)-(k)
Spill and Overfill Control	5.1(a) and (b)	30(a)-(b)
Operation and Maintenance of Corrosion Protection	5.2(a)	31(a)-(c)
Compatibility	5.3(a)	32
Repairs	5.4(a) and (c)	33(a)-(e)
General Requirements for All UST Systems	6.1(a), (b) and (d)	40(a), (b) and (d)
Requirements for UST Systems Containing Petroleum Products and Waste Oil	6.2(a)	41(a) and (b)
Requirements for UST Systems Containing Hazardous Substances Other Than Petroleum Products and Waste Oil	6.3(a)1 and 2	42(a) and (b)

Methods of Release Detection for Tanks	6.5(a)1-8	43(a)- (h)
Method of Release Detection for Piping	6.6(a)	44(a)-(c)

Subchapter 1

N.J.A.C. 7:14B-1.1, 1.2, 1.3 and 1.5 do not require comparison to Federal law or regulations since these sections do not impose any standards or requirements on the regulated community.

N.J.A.C. 7:14B-1.4 sets forth the categories of underground storage tank systems that are subject to N.J.A.C. 7:14B. N.J.A.C. 7:14B-1.4 includes subject matter that is comparable to the Federal regulations at 40 C.F.R. 280.10. The rules concerning applicability contain total and partial exemptions for certain types of underground storage tank systems based on similar exemptions provided by Federal regulations and New Jerseys Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

N.J.A.C. 7:14B-1.4 Total exemptions

N.J.A.C. 7:14B-1.4(b) sets forth the types of underground storage tank systems that are completely exempted from regulation under N.J.A.C. 7:14B. N.J.A.C. 7:14B-1.4(b) contains 14 exemptions for underground storage tank systems that are similar to the exemptions that are provided by Federal regulations at 40 C.F.R. 280.10 and 280.12.

N.J.A.C. 7:14B-1.4(b)1 and (b)5 through (b)14 are substantially identical to exemptions provided by 40 C.F.R. 280.10 and 280.12.

N.J.A.C. 7:14B-1.4(b)2 and (b)3 provide exemptions for underground storage tank systems used to store heating oil in nonresidential and residential buildings, respectively. The Federal

regulations at 40 C.F.R. 280.12 provide a similar exemption. N.J.A.C. 7:14B-1.4(b)3 is substantially identical to 40 C.F.R. 280.12 as applied to residential buildings.

N.J.A.C. 7:14B-1.4(b)2 differs from the Federal regulations at 40 C.F.R. 280.12 since 7:14B-1.4(b)2 applies only to a facility with a capacity of 2,000 gallons or less. N.J.A.C. 7:14B-1.4(b)2 is based on the identical exemption provided by the Act, specifically N.J.S.A. 58:10A-22p(2).

N.J.A.C. 7:14B-1.4(b)4 provides an exemption for septic tanks that is based on the exemption provided by both the Act, specifically N.J.S.A. 58:10A-22p(4) and the Federal regulations at 40 C.F.R. 280.12. N.J.S.A. 58:10A-22p(4) and N.J.A.C. 7:14B-1.4(b)4 contain identical provisions. N.J.A.C. 7:14B-1.4(b)4 differs from the Federal regulations by limiting the exemption only to those septic tanks that are installed pursuant to "The Realty Improvement Sewerage and Facilities Act (1954)," N.J.S.A. 58:11-23 et seq. This provision only clarifies that the exemption is limited to septic tanks installed in accordance with the applicable laws in New Jersey and thereby does not exceed the applicable Federal regulation. The State of New Jersey has a strong interest in ensuring that all related statutes and rules provide a coordinated and consistent approach to regulated activities.

N.J.A.C. 7:14B-1.4(b)6 provides an exemption for surface impoundments, pits, ponds, lagoons, storm water or wastewater collections operated in compliance with N.J.A.C. 7:14A-1 et seq. This exemption is substantively identical to the exemption provided by N.J.S.A. 58:10A-22. N.J.A.C. 7:14B-1.4(b)6 differs from the Federal regulations at 40 C.F.R. 280.12 only with regards to the reference to N.J.A.C. 7:14A-1 et seq. As discussed above, this provision does not exceed any Federal regulation but merely ensures a coordinated framework of regulated activities.

The Federal rules at 40 C.F.R. 280.10(b) contain four total exemptions for underground storage tank systems that will not be incorporated into the Department’s proposal at N.J.A.C. 7:14B. The four Federal exemptions are:

1. Any underground storage tank system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances (40 C.F.R. 280.10(b)(1));

2. Any underground storage tank system whose capacity is 110 gallons or less (40 C.F.R. 280.10(b)(4));

3. Any underground storage tank system that contains a de minimis concentration of regulated substances (40 C.F.R. 280.10(b)(5)); and

4. Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use (40 C.F.R. 280.10(b)(6)).

The Department is not incorporating the Federal exemption for an underground storage tank system containing RCRA waste in order to provide a unified regulatory framework for all underground storage tank systems regulated by the State of New Jersey. The Department regulates underground storage tank system containing RCRA waste under N.J.A.C. 7:14B rather than creating a duplicate set of regulations that would pertain only to these types of underground storage tank systems. The Department's programs that administer the Federal RCRA program refer to N.J.A.C. 7:14B for operation, maintenance and closure requirements. Therefore, a separate regulation for RCRA underground storage tank systems would be superfluous. In addition, the Act does not make any provisions for exempting an underground storage tank system that contains RCRA waste.

The Department does not include the Federal exemption at 40 C.F.R. 280.10(b)(4), for an underground storage tank system with a capacity of 110 gallons or less. The Legislature established several exemptions in the Act which include criteria based on both, the capacity and the intended use of the underground storage tank system. However, the Act does not authorize the Department to exempt an underground storage tank system solely based on size. As previously stated, small quantities of hazardous substances discharged to ground water can result in the need

for remediation or treatment prior to potable use. The Department is authorized to regulate a small underground storage tank system based on statutory authority and safety concerns thereby precluding their exemption in the proposed rules. In reality, no underground storage tanks 110 gallons or less in size are registered with the Department. Therefore, Executive Order 27 (1994) and P.L. 1995, c.65 do not require any further analysis.

The Department does not include the Federal exemption provided at 40 C.F.R. 280.10(b)(5) for de minimis quantities. The Federal regulations exempt an underground storage tank which contains a de minimis quantity of hazardous substances. The Federal regulations do not define "de minimis quantity". The preamble to the Federal rule (Federal Register Volume 53, Number 185, Page 37108) leaves the determination of de minimis quantity to the state programs.

The Department has reviewed the issue of de minimis quantity and has determined that it is not appropriate to include any exemption for an underground storage tank which contains a de minimis quantity of a hazardous substance. This is based on the same rationale as described above concerning the exemption of a small underground storage tank. For example, a discharge of a "de minimis" quantity of hazardous substances from an underground storage tank system will cause the same amount of harm to the environment regardless of the size of the underground storage tank system. Therefore, an exemption based solely on the quantity of hazardous substances contained in the underground storage tank system does not adequately protect human health, safety and the environment.

Additionally, New Jerseys environmental statutory scheme does not permit discharges based on de minimis quantities. The Spill Act requires that all discharges of a hazardous substances are to be remediated. There are no exemptions or waivers for de minimis quantities. The 1994 Amendments contain similar "zero-tolerance" provisions concerning the potential discharge of hazardous substances from an underground storage tank system. N.J.S.A. 58:10A-25(a)(5) requires "the reporting of any discharges and the corrective action taken in response to a discharge from an underground storage tank."

Therefore, the underground storage tank system is regulated pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B if any quantity of a hazardous substance can be measured.

The Department partially incorporates the Federal exemption at 40 C.F.R. 280.10(b)6 for an underground storage tank system that is expeditiously emptied after use. N.J.A.C. 7:14B-1.6 defines a "sump" as follows: "Sump" means any pit or reservoir that meets the definition of an underground storage tank (including pipes, troughs or trenches connected to it) that serves to collect or contain a hazardous substance for no more than 48 hours.

The Department's definition of sump incorporates the underground storage tank systems identified in the Federal regulations at 40 C.F.R. 280.10(b)(6). The Department does not grant the total exemption as provided by 40 C.F.R. 280.10(b)(6). However, the Department limits the compliance requirements for underground storage tank systems that meet the definition of a sump. The Department requires that sumps be required to meet some of the design, construction, installation and operational requirements of N.J.A.C. 7:14B-4 and 7:14B-5 as well as the release reporting and remediation requirements of 7:14B-7 and 7:14-8, respectively.

The Department regulates sumps in the aforementioned manner based on the increased potential threat posed by underground storage tank systems that are infrequently used. The Department's experience in administering the underground storage tank program supports the regulation of sumps, as defined by N.J.A.C. 7:14B-6, due to common problems caused by corrosion and improper installation. The placement of a metallic underground storage tank system in the ground will naturally result in corrosion affecting the integrity of the underground storage tank system. Infrequent use of the underground storage tank system may allow corrosion to remain undetected until a hazardous substance is stored in the underground storage tank system. Any hazardous substances placed in the underground storage tank system effected by corrosion or improper installation would be released into the environment.

An owner or operator of an underground storage tank system that is completely exempt from Federal regulation but not from N.J.A.C. 7:14B will incur certain costs associated with

compliance with the Department's regulations for underground storage tank systems. The registration fee for an underground storage tank system is currently $100 for a three year period. Expenses, such as the price of the tank and piping would already be borne by the tank owner and would not be included as additional expenses. Additional expenses include the following:

Spill Prevention:	$800 - $2,400
Overfill Prevention:	$1000 - $4,000
Corrosion Protection:	$0 - $12,000
(no charge if tank is made of corrosion resistant materials i.e., fiberglass)	
Release Detection Monitoring:	$50/month or $0 - $6,000
($50 dollar per month charge for Statistical Inventory Reconciliation. 4 monitoring wells would be approximately $400. Monthly monitoring is no extra cost. The interstice of secondarily contained systems can be manually monitored at no additional cost).	
Testing of Corrosion Protection System:	$350 every three years
Total Cost (with labor and concrete):	up to $25,000 for one 2,000 gallon tank system up to $30,000 for one 10,000 gallon tank system

Note: the total cost estimate is based upon estimates submitted to the Department for upgrading tanks with internal lining, a containment sump, an in-tank monitoring system, and overfill prevention with riser and fill tube.

N.J.A.C. 7:14B-1.4 Partial exemptions

N.J.A.C. 7:14B-1.4(c) and (d) sets forth the types of underground storage tank systems that are partially exempted from regulation under N.J.A.C. 7:14B. N.J.A.C. 7:14B-1.4(c) specifies the

underground storage tank systems that are only required to comply with registration, release reporting and investigation, remedial activities and fee portions of N.J.A.C. 7:14B. N.J.A.C. 7:14B-1.4(d) outlines the design, construction and installation requirements for underground storage tank systems which are categorized as sumps.

N.J.A.C. 7:14B-14(c) exempts two types of underground storage tank systems from all compliance requirements under N.J.A.C. 7:14B except for registration (N.J.A.C. 7:14B-2), payment of fees (N.J.A.C. 7:14B-3), release reporting and investigation (N.J.A.C. 7:14B-7) and remedial action (N.J.A.C. 7:14B-8). The Federal regulations at 40 C.F.R. 280.10(c) provide similar partial exemptions to specified underground storage tank systems, except that Federal partial exemptions include registration and release reporting and investigation requirements. The only additional cost for operating these systems in New Jersey is the registration fee of $100 every three years.

The Department requires all underground storage tank systems regulated pursuant to the Act and these rules to be registered in order to keep an inventory of the location, size and contents. The registration of underground storage tank systems significantly enhances the Department's ability to address the problem of an unknown source of contamination that is migrating through the environment. The ability of the Department to rapidly detect the source of migrating contamination will mitigate potential impact to human health, safety and the environment and will reduce the amount of financial resources necessary to remediate the contaminated site. Information concerning an existing or closed underground storage tank system is an integral component of the Department's administration of the underground storage tank program.

The Act, specifically, N.J.S.A. 58:10A-25(a)10 requires that the Department establish rules requiring that the Department and local authorities are notified of the existence of any operational or nonoperational underground storage tank systems. Therefore, the Department requires any underground storage tank system that is regulated by these proposed rules to be registered in accordance with proposed N.J.A.C. 7:14B-2.

N.J.A.C. 7:14B-1.4(c) requires that an owner or operator of an underground storage tank system listed at 7:14B-1.4(c) comply with the release reporting and investigation requirements of N.J.A.C. 7:14B-7. As stated above, the Federal rules exempt the N.J.A.C. 7:14B-1.4(c) types of underground storage tank systems from release reporting and investigation requirements.

The State of New Jerseys environmental statutory framework requires an owner or operator of an underground storage tank system to immediately report any releases from the underground storage tank system upon discovery. N.J.S.A. 58:10A-25(a)5 requires the reporting of any discharges from an underground storage tank into the environment. The Spill Act and the Water Pollution Control Act require an owner or operator to report any discharges.

The requirements of N.J.A.C. 7:14B-7 are intended to ensure that appropriate preventive measures are implemented as soon as a release is detected in order to minimize any impact to the environment. N.J.A.C. 7:14B-7 outlines the procedures for an owner or operator to respond to early indications that a release may have incurred. Proposed N.J.A.C. 7:14B-7 sets forth the appropriate investigative measures to confirm a suspected release.

When a owner or operator of an underground storage tank system suspects a release has occurred, an investigation of the system must be performed to confirm or deny the release within seven calendar days. This investigation includes performing activities which impose no additional cost to the owner or operator, such as checking all records of system calibration, deliveries and inventory, checking the monitoring systems to ensure they are operating properly. Any wells used for product or vapor monitoring of the tank system may be checked for signs of a release. If the suspected release can be shown to be a false alarm, no further investigation is necessary by the system owner of operator. The owner or operator is required to notify the Department only after a release has been confirmed or the suspected release cannot be denied.

Due to the construction of N.J.S.A. 58:10A-21 et seq., the New Jersey underground storage tank program regulates a larger community than the Federal program. While the Federal UST program contains exclusions from regulation of tank systems such as heating oil used for on-

site consumption, the State program includes non-residential heating oil facilities with a capacity greater than 2000 gallons as specified at N.J.S.A. 58:10A-22(p). Additionally, the Federal rule contains exclusions for tanks which are 110 gallons or smaller in size, tanks containing de minimis quantities of hazardous substances and emergency spill tanks which are expeditiously emptied (defined as "sumps" in the proposed regulations). While N.J.S.A. 58:10A-22(p) contains some of the Federal exclusions, there is none for size, hazardous substance concentration or speed of product removal. In fact, the New Jersey statutory definition of underground storage tank only twice mentions size limitations; for heating oil tanks at non-residential properties and motor fuels used at farms and residences for non-commercial use.

Therefore, the Department interprets the 1994 statutory amendments to allow the regulation of any tank which the Federal government has excluded from all regulation.

The Federal tank program regulates hazardous substances strictly upon its composition. as noted N.J.A.C. 7:14B-1.4(g), the state underground storage tank program regulates a substance based upon its usage. An example is heating oil. Number 2 heating oil has a chemical composition which is similar to diesel fuel and is occasionally purchased to substitute for diesel fuel. In this situation, since the fuel is used as a motor fuel rather than a heating fuel, the 2,000 gallon tank size limit would not apply to this tank.

N.J.A.C. 7:14B-1.6 - Definitions

In addition, New Jersey's definition of hazardous substance is significantly broader than that of the Federal government. N.J.S.A. 58:10A-21 et seq. defines a hazardous substance to include any of the wastes, compounds and process by-products defined in a variety of Federal statutes. The definition at N.J.A.C. 7:14B-1.6 not only encompasses all hazardous substances and wastes defined by four Federal laws, it includes all other defined hazardous substances in New Jersey.

N.J.A.C. 7:14B-1.7 contains amendments and readopted certification statements to be signed by tank owners and consultants upon submission of documents to the Department. There is

no Federal counterpart to this requirement. It should not increase any costs associated with the site.

N.J.A.C. 7:14B-1.8 specifically places liability upon tank owners, tank operators and firms which supply facilities which are not registered or are known to be leaking. Although no specific statement such as this is in Federal rule, it is an outgrowth of 40 C.F.R. 280.22 and 280.62 which requires registration of all facilities and removal of product from leaking tanks.

Subchapter 2

The Department's proposed readoption of N.J.A.C. 7:14B-2 continues the registration of underground storage tank systems. As stated in the Summary earlier, one of the main purposes of registration is to document and inventory the location, size and contents of all underground storage tank systems. The registration program provides the Department with the necessary data to make an informed decision regarding unknown contamination sources in order to mitigate the spread of contamination through the environment.

The Federal rules, specifically, 40 C.F.R. 280.22 require a regulated underground storage tank system to be registered with the Department. As originally enacted, N.J.S.A. 58:10A-23(a) required the owner or operator of a facility to register an underground storage tank system with Department no later than 180 after the effective date of the statute (September 3, 1986). The Federal rule requires registration of tank systems which were not removed or abandoned-in-place as of May 8, 1986, whereas the state requires registration of tank systems which were not closed as of September 3, 1986.

The Federal rule encompasses a four month period greater than the Department's rules. The difference in coverage is inconsequential and becomes less important to the Department and the regulated community with the passage of time.

Subchapter 3

N.J.A.C. 7:14B-3.5 sets forth a fee schedule and direct billing formula which will be applied to all oversight activities performed by the Department.

The Federal program is funded through a combination of appropriations, taxes on specific petroleum activities and Federal trust mechanisms. Any activities conducted by the various USEPA units involved in administering the Federal program are covered by these funding mechanisms.

The Federal government does not charge any fees to an owner or operator of an underground storage tank system to implement the Federal underground storage tank program. The Federal underground storage tank program is administered by means of a state program which is responsible for implementing the requirements of 40 C.F.R. 280 et seq. The State is responsible for implementing and funding the Underground Storage Tank programs registration, permit review, remediation workplan and report reviews.

The Department's Underground Storage Tank program does not receive any appropriation from the General Treasury Fund, but relies on fees, Federal government grants and reimbursement of Department oversight costs from responsible parties for its entire budget. The Department's assessment of fees and oversight costs pursuant to N.J.A.C. 7:14B-3 is not comparable to the Federal rules governing underground storage tank systems. Accordingly, Executive Order 27 (1994) and P.L. 1995, c.65, do not require any further analysis.

Subchapter 4

N.J.A.C. 7:14B-4.1 sets forth design, construction and installation requirements for all underground storage tank systems installed on or after September 4, 1990. These requirements are substantially identical to the applicable Federal rules at 40 C.F.R. 280.20, Subpart B.

N.J.A.C. 7:14B-4.1(b) sets forth construction and release detection monitoring standards for new tank systems installed within wellhead protection areas that vary from the requirements for

all other underground storage tank systems. The Federal rules do not contain separate construction and release detection monitoring standards for an underground storage tank system located in an environmentally sensitive area.

The Department's rules governing an underground storage tank system located within a wellhead protection area exceed the requirements of the applicable Federal rules. As stated earlier in the Summary, N.J.S.A. 58:10A-22(q) and 58:10A-25(a)(2) authorize the Department to define wellhead protection areas and to establish tank construction, release detection monitoring and upgrade standards which may be more stringent than the Federal regulations.

The Legislature recognized that the potential for a discharge from an underground storage tank system located in close proximity to a well poses a significant threat to the water quality of the well. The areal extent of the wellhead protection area is determined by the use of time-of-travel and hydrologic boundaries as described in the Summary above.

An owner or operator of a new underground storage tank system located within a wellhead protection area will be required to install a secondarily contained system with interstitial release detection monitoring in order to comply with the requirements of proposed N.J.A.C. 7:14B-4.1. The owner or operator will incur the additional costs of only secondary containment when compared with an equivalent single-walled tank system (Approximately $30,000 to $35,000 for a 10,000 gallon system). Although interstitial monitoring is mandated for the system within the wellhead protection area, some form of release detection monitoring is required for all tank systems. The cost to install a monitoring system is dependent upon the monitoring system chosen. It is possible that the cost of installation of a release detection monitoring system for a single walled tank system is greater than that for a secondarily contained system resulting in a smaller cost differential than previously noted.

The requirements of N.J.A.C. 7:14B-4.1 ensures that any release from an underground storage tank system will be detected and contained before a discharge occurs. An owner or operator of an underground storage tank system that does not meet the N.J.A.C. 7:14B-4.1

specifications, and discharges a hazardous substance within a wellhead protection area, may be responsible for conducting a soil and groundwater remediation. The average cost of a soil and groundwater remediation within a wellhead protection area is $500,000 plus any costs incurred to ensure that all affected persons have an alternative water source. It is difficult to quantify all potential impacts to the community or person that is affected by the contamination of a well. The costs involved solely for remediation efforts obviates the need to assign a monetary amount to the impact to the community or person for the purpose of this analysis

Based on the above analysis, the preventive costs required by proposed N.J.A.C. 7:14B-4.1(b) are minimal when compared to the potential costs of remediation.

N.J.A.C. 7:14B-4.1(l) prohibits the installation of an underground storage tank system within 50 feet of a public community or non-public community supply system well. This provision is consistent with the relevant water supply regulations at N.J.A.C. 7:10-11.~~4(b)2~~7(b). Since N.J.A.C. 7:10-11.4(b)2 already requires the well owner to obtain all property within a 50 foot radius of the well and prohibits any potential source of contamination from existing within that boundary, no hardship or additional expense will be place upon any tank owner or operator. The Federal regulations at 40 C.F.R. 280 do not involve siting issues. Accordingly, Executive Order 27 (1994) and P.L. 1995, c.65, do not require any further analysis.

The Federal rules are also silent with respect to the installation of a new tank system near a non-community supply well. Although a prohibition for the storage of hazardous substances near a non-community supply system well is not mentioned in any New Jersey regulation, the Department feels that the same level of protection should be applied to these water systems. N.J.A.C. 7:14B-4.1(l) prohibits the installation of a tank system within 50 feet of a non-public community supply system well. Using the model previously noted in the Department's August 1989 Basis and Background document, the 50 foot prohibition represents only an approximate travel time of 10 days, significantly less time than the one month period which most monitoring is performed. The Federal regulations at 40 C.F.R. 280 do not involve siting issues. Accordingly, Executive Order 27 (1994) and P.L. 1995, c.65, do not require any further analysis.

N.J.A.C. 7:14B-4.2 sets forth the upgrade requirements for existing tank systems. For all systems but those located within wellhead protection areas, the requirements are identical to the Federal requirements. To ensure continued water quality in wellhead protection areas, the Department is proposing that the owner or operator of an underground storage tank system shall perform a site investigation in accordance with N.J.A.C. 7:26E before any permit is issued to upgrade the underground storage tank system. When a discharge from the underground storage tank is identified, the Department will issue a permit only if the owner or operator has notified the Department of the discharge, initiates measures to repair the leaking portion of the tank system and has developed or submitted a plan for the remediation of the site to the Department. These procedures will ensure that historical discharges in wellhead protection areas will be identified and remedial efforts initiated to prevent or mitigate discharges from affecting supply wells. The cost of the initial site investigation includes obtaining and chemically analyzing at least four soil borings and preparing a report documenting the work performed. The cost ranges from $3,000 to $8,000.

Subchapter 5

N.J.A.C. 7:14B-5 sets forth the general operating requirements for underground storage tank systems. As required pursuant to N.J.S.A. 58:10A-25(a)2, N.J.A.C. 7:14B-5 is substantially identical to the applicable Federal regulations at 40 C.F.R. 280, Subpart C. The Department's proposed N.J.A.C. 7:14B-5 contains three issues which are treated differently than the applicable Federal regulations. The three issues are, records retention, release response plan and fill port marking.

N.J.A.C. 7:14B-5.2(a)4 and 5.6 require the owner or operator of a facility to maintain all operational records, such as corrosion protection tests, installation checklists, records of repairs and monitoring until the Department approves of their discard. The equivalent Federal rules at 40 C.F.R. 280.31(d) and 280.45 require that an owner or operator maintain documentation for a specified period of time.

The Department's recordkeeping requirements benefit the owner, operator and the Department. The maintenance of records beyond the date of underground storage tank closure ensures continued access to documentation that will facilitate the determination of a historical discharge or resolve operational questions that may have relevance long after the underground storage tank is closed. The retention of records may save the owner or operator additional expenses of performing a site investigation when the documentation may be used to confirm the integrity of the underground storage tank.

The Federal regulations assume that periodic inspections will be conducted by state or local authorities on a regular basis. While periodic inspections remain an state and local objective, limited state and local resources preclude using periodic inspections as the only mechanism to assess the historical status of an underground storage tank system. Therefore, the retention of records is a critical factor to resolve historical operational questions.

An owner or operator will incur minimal costs in order to comply with the record retention requirements of N.J.A.C. 7:14B-5. The records can be stored in file boxes at the facility or at another location where they would be readily available upon request. The cost of the file boxes and paper is less than $100. As stated above, these records may preclude the need for an owner or operator to conduct a site investigation of the underground storage tank system. A conservative estimate for a site investigation of a facility containing three 10,000 gallon underground storage tanks is $10,000 or greater.

The record retention requirements of N.J.A.C. 7:14B-5 places only an incidental financial and resource burden on an owner or operator. The owner or operator is required to conduct all these activities regardless of the recordkeeping requirements. The only costs to the owner is the compilation of records and the storage of documents. The cost-benefit analysis supports the Department's rationale for retaining these records when compared to remedial activities that may be required in absence of such records.

N.J.A.C. 7:14B-5.5 requires every underground storage tank system owner or operator to maintain a release response plan on site. The release response plan consists of a list of the appropriate people and agencies to contact in the event of a suspected or confirmed release from an underground storage tank system. The Federal regulations do not contain any provision for a release response plan.

The need to maintain a release response plan at an underground storage tank facility is based on common sense and reasonable safety concerns and is already implemented by many owners or operators as a practical business consideration. Another factor that supports the need for the release response plan is that many underground storage tank facilities are operated by individuals who have little if any knowledge or understanding of tank system construction or the underground storage tank regulations.

The Department's experience demonstrates that not all owners or operators have considered the need for a release response plan or have taken the minimal efforts necessary to develop a plan. Therefore, the Department will readopt the requirement for the development and maintenance of a release response plan. The list of contact persons and telephone numbers ensure early reporting of potential problems to those persons who are knowledgeable and can initiate an appropriate response.

An owner or operator can create a release response plan in accordance with N.J.A.C. 7:14B-5.5 without the need to employ an environmental consultant or other professional. The owner or operator will only incur minimal costs in addition to the time required to compile the necessary information. The release response plan may prevent or mitigate an impact to the environment which could result in the need for a site investigation or remedial action. Therefore, the benefit of a release response plan clearly outweighs the potential environmental and financial impact that may occur if a person has to waste time during a crisis trying to determine who should be called and what response actions should be initiated.

N.J.A.C. 7:14B-5.8 requires an owner or operator to mark the fill ports to the underground storage tank system in accordance with the standards developed by the American Petroleum Institute (API). The Federal rules do not contain a similar provision.

Similar to the issue of a release response plan, many owners or operators currently mark all fill ports to identify the product stored in the underground storage tank system for safety and business considerations. A marked fill port provides an additional control on the introduction of a hazardous substance into an underground storage tank system to ensure that an underground storage tank system is not filled with a substance for which it is not intended. Marked fill ports also provide immediate identification of product storage which may expedite an inspection or investigation of an underground storage tank system.

An owner or operator is required to purchase paint and apply it to the fill ports to comply with N.J.A.C. 7:14B-5.8. The cost for several paint containers will be less than $30. The potential environmental and financial impact of inadvertently filling an underground storage tank system with a hazardous substance for which the tank was not designed, evinces the dollar cost, time and effort necessary to comply with proposed N.J.A.C. 7:14B-5.8.

Subchapter 6

N.J.A.C. 7:14B-6 incorporates the release detection requirements established in the Federal rules at 40 C.F.R. 280, Subpart D. As required pursuant to N.J.S.A. 58:10A-25(a)2, N.J.A.C. 7:14B-6 is substantially identical to the applicable Federal rules.

The Federal rule, 40 C.F.R. 280.40 requires that all underground storage tank systems shall be monitored for releases no later than December 22, 1993. N.J.A.C. 7:14B-6.1, sets no date for initiation of release detection monitoring but, since the Federal deadline has past, requires release detection monitoring of all existing and new underground storage tank systems.

The requirement for release detection monitoring of heating oil underground storage tank systems imposes costs upon the tank owner that are not imposed by the Federal rule. For new or

existing tank systems that are double walled, an owner or operator may choose to manually inspect the interstitial space. The total cost of monitoring is the time it takes to complete the task. Other forms of release detection monitoring require an investment in either equipment, such as the installation of monitoring wells, or periodic expenditures for a tank tester. The estimated range of costs for monitoring will be approximately $400 to $800 every three years for testing of the tank system or an initial expense of $50 to $6,000 for the installation of a monitoring system.

N.J.A.C. 7:14B-6.4 provides the release detection monitoring requirements for underground storage tank systems located within wellhead protection areas. As previously described above, an owner or operator will incur costs for the installation, construction, operation and monitoring of an underground storage tank system that is located in a wellhead protection area. The cost-benefit analysis addressed above, demonstrates that the Department's stricter requirements for underground storage tank systems in wellhead protection areas is economically supported and technically achievable.

The Department's recordkeeping requirements for the monitoring systems at N.J.A.C. 7:14B-6.7. The substantive information that is required to be recorded is similar to the Federal rule at 40 C.F.R. 280.45. As previously addressed in the discussion of the Department's proposal at N.J.A.C. 7:14B-5 for record retention requirements, the Department's regulations require a longer retention schedule. See the discussion above for the cost-benefit analysis concerning record retention schedules. The Department's requirement is supported by the minimal costs to comply with proposed N.J.A.C. 7:14B-6.7 when weighed against the potential costs to the owner or operator if these records are not available at a later date.

Subchapter 7

N.J.A.C. 7:14B-7, requires an owner or operator to investigate suspected releases of hazardous substances. Upon confirmation of a release, the owner or operator is required to notify the Department in accordance with proposed N.J.A.C. 7:14B-7.3(a). N.J.A.C. 7:14B-7 is similar to the Federal rules at 40 C.F.R. 280, Subpart E. The Department's requirement's exceed the requirements of the Federal rules, specifically 40 C.F.R. 280.50(c), concerning the timing for

review of inventory records to determine whether a release has occurred. The Federal rule, 40 C.F.R. 280.50(c)(2) requires the evaluation of inventory control records for findings outside the limits set in the applicable manual tank gauging and inventory control regulations, for a two month period before the owner or operator must consider the discrepancy a "release" requiring further investigation. N.J.A.C. 7:14B-7.1(a) considers a one month inventory control discrepancy to indicate a release requiring further action.

The requirements for investigating a suspected release is the same under the Federal rules and this readoption. The difference between the two rules is limited to the timing of the triggering event. The Department's experience in investigating suspected releases and overseeing subsequent remedial actions demonstrates that the initiation of an investigation immediately upon discovery of a suspected release can significantly decrease both, the environmental impact of a discharge and the financial impact to the owner or operator to respond to the discharge.

In the case of a falsely suspected release, the owner or operator will incur minimal costs to implement the investigative requirements of proposed N.J.A.C. 7:14B-7.2. The owner or operator will be required to allocate several hours to reviewing the relevant records and visually examining the physical underground storage tank facility.

Conversely, the owner or operator may confirm that a release has occurred and can implement the necessary remedial activities one month earlier than would be required under Federal rules. The owners or operators timely response will mitigate the migration of hazardous substances and the impact of the contamination. The time variance between the one month or two month response to inventory records may represent the difference between a minor soil remedial action and a groundwater investigation.

The Department's requirement of investigating an inventory control discrepancy based on one month rather than two months as required in the Federal regulations, represents a reasonable and cost-effective method to prevent or minimize any potential impact to the environment from a leaking underground storage tank system. The cost to discover a "false-positive" release is

minimal (measured in hours rather than dollars since the investigation does not necessarily require capital expenditures beyond allocation of salary costs) when compared to the environmental and financial damage that may ensue from a month-long continuous discharge from an underground storage tank system.

N.J.A.C. 7:14B-7.2(a)5 restricts the use of precision tests as an investigative tool to those situations where a previous precision test had indicated a release occurred and it can be demonstrated the results of the failed test is unreliable. The Department's experience demonstrates that precision tests have limited beneficial results when used to confirm or disprove a suspected release. A precision test does not investigate the entire underground storage tank system in a manner that an owner or operator can draw definite conclusions concerning the integrity of the underground storage tank system. Therefore, the Department does not encourage precision testing.

The Federal rules at 40 C.F.R. 280.52 authorizes an owner or operator to conduct a precision/tightness test as part of the investigation of a suspected release. The Department's requirements for investigation of suspected releases employs the best available technology to address suspected releases and is consistent with the Federal rules. Accordingly, Executive Order 27 (1994) and P.L. 1995, c.65 do not require any further analysis.

Subchapter 8

N.J.A.C. 7:14B-8 sets forth the procedural requirements for remediating a discharge from an underground storage tank system with the oversight of the Underground Storage Tank program. The technical requirements for conducting a remediation can be found at N.J.A.C. 7:26E.

The Federal rules at 40 C.F.R. 280, Subpart F address procedural and technical corrective action requirements. The Federal rules provide schedules for completing corrective actions but authorize the Department to adopt other schedules and requirements.

The requirements of N.J.A.C. 7:14B-8 are different from the Federal rules regarding specific schedules and the procedures to implement and document corrective actions. For

example, 40 C.F.R. 280.62, 280.63, and 280.64 require a report documenting the initial abatement action within 20 calendar days of identifying a discharge, a report documenting the initial site characterization (remedial investigation) within 45 calendar days of identifying a discharge, and a report documenting free product removal, if applicable within 45 calendar days of identifying a discharge. The Department's schedule of 120 calendar days allows an owner or operator adequate time to complete the initial abatement activities, the remedial investigation and begin free product removal before submitting the report. This decreases costs to an owner and operator because it focuses available resources to address remedial actions and reduces paperwork by limiting the amount of reports to be prepared and submitted to the Department.

Therefore, N.J.A.C. 7:14B-8 does not contain any standards or requirements that exceed the standards or requirements imposed by the applicable Federal rules at 40 C.F.R. 280, Subpart F and no further analysis is required pursuant to Executive Order 27 (1994) and P.L. 1995, c.65.

Subchapter 9

N.J.A.C. 7:14B-9.1 sets forth the requirements for an owner or operator to maintain an out of service underground storage tank system.

The Federal rules at 40 C.F.R. 280.70 outline the requirements for an owner or operator to temporarily maintain an out of service underground storage tank system for a period of time greater than 12 months. The Federal rules make a distinction between a temporary closure of underground storage tank systems based on their compliance status with upgrading requirements.

The Federal rules allow an underground storage tank system that is in compliance with upgrade requirements to remain out of service indefinitely if the underground storage tank system is empty and complies with corrosion protection. The Federal rules do require a site investigation be performed if the underground storage tank system will remain out of service for a period greater than 12 months and has not been properly upgraded with cathodic protection.

The Department's rules encourage an owner or operator to remain vigilant about the underground storage tank system until permanent closure and ensures that a historical examination of the underground storage tank system can be obtained throughout the life of the system.

N.J.A.C. 7:14B-9.1(c) does not make the same distinction between upgraded and non-upgraded underground storage tank system for an owner or operator to maintain an out of service underground storage tank system for a period of time greater than 12 months and is therefore more stringent than Federal requirements.

N.J.A.C. 7:14B-9.1(c) requires an owner or operator maintaining an out of service underground storage tank system for a period of time greater than 12 months to conduct a site investigation prior to the expiration of the 12 month period except where release detection monitoring has been implemented in accordance with the proposed rules for the operational life of the underground storage tank system or since the last site investigation.

The monitoring devices required pursuant to this chapter are limited to detecting future discharges and do not provide any support concerning historical discharges prior to their use. An underground storage tank system that is fully upgraded may still have previously discharged hazardous substances into the environment. Under the Federal rules, any historical discharges may remain undetected for an indefinite period of time.

N.J.A.C. 7:14B-9.1(c) reflects a balanced approach to evaluating underground storage tank systems for historical and current discharges. The Department's requirement that a site investigation be completed as a prerequisite to maintaining an out of service underground storage tank system provides a baseline to evaluate historical discharges. The Department's reliance on release detection monitoring sets forth the current status of the underground storage tank system since the baseline investigation. Proposed N.J.A.C. 7:14B-9.1(c) reinforces the beneficial impact to the owner or operator of proper release detection monitoring.

N.J.A.C. 7:14B-9.2 requires an owner or operator to give at least 30 calendar days notice to the Department and the local and county health department prior to closing a regulated underground storage tank system. The Federal rule only requires a 30 calendar day notification to the implementing agency, 40 C.F.R. 280.71.

The notice provision in the Federal rules is intended to afford a regulating authority time to inspect an underground storage tank system closure. The Department's rules at N.J.A.C. 7:14B-9.2(a)1 requires notice to local and county authorities since they inspect underground storage tank system closures within their respective jurisdictions. An owner or operator may notify local officials on the same forms that are submitted to the Department. Therefore, the owner or operator will incur only those additional costs necessary to copy or complete a second form.

The incidental cost to comply with N.J.A.C. 7:14B-9.2(a)1 is minimal when compared to the need to ensure that local authorities are apprised of pending underground storage tank system closures and are able to direct their limited resources to inspecting potentially hazardous conditions within their jurisdiction.

N.J.A.C. 7:14B-9.2(c) sets forth the requirements for an owner or operator to complete or submit a closure plan for an underground storage tank system. There is no Federal equivalent regulations concerning a closure plan. N.J.A.C. 7:14B-9.2(c) does not exceed the Federal law because the Department will not require an owner or operator to submit a closure plan for review.

The Department will continue to review and respond to any closure plans submitted by an owner or operator who elects to have the Department review the plan prior to implementation. The Department will charge $300 to review and respond to the submission of a closure plan. Therefore, based on the voluntary nature of the submission of a closure plan, no further analysis is required pursuant to Executive Order 27 (1994) and P.L. 1995, c.65.

The New Jersey Uniform Construction Code, N.J.A.C. 5:23 requires an owner or operator to obtain a demolition permit from the local construction office. N.J.A.C. 7:14B-9.2(a)3 requires

that an owner or operator send a copy of the Department's notice with the application for a local demolition permit. There is no corresponding requirement in the Federal rules.

N.J.A.C. 7:14B-9.2(a)3 provides consistency with the New Jersey Uniform Construction Code and alerts an owner or operator to their obligations to the local construction office. Proposed N.J.A.C. 7:14B-9.2(a)3 does not require an owner or operator to take any actions beyond what is required by the New Jersey Uniform Construction Code.

Therefore, the Department's requirements merely incorporates the requirement for consistency and to provide additional notice to an owner or operator. No further analysis is required pursuant to Executive Order 27 (1994) and P.L. 1995, c.65.

N.J.A.C. 7:14B-9 and the Federal rules at 40 C.F.R. 280.72 require that an owner or operator of an underground storage tank system conduct a site investigation at the time of permanent closure. The Federal rules require an owner or operator to submit the results of the site investigation only in those circumstances when contamination is discovered. Pursuant to N.J.A.C. 7:14B-9.5, an owner or operator is required to submit the results of the site investigation to the Department, regardless of whether or not contamination is identified.

~~The cost for Department review of a site investigation report and remedial investigation report is $500 and $1000, respectively. The submission of the site investigation report or remedial investigation report to the Department ensures that the closure and remediation were performed in accordance with this chapter and the relevant technical requirements of N.J.A.C. 7:26E.~~

~~Based on the potential environmental and financial impact/costs that could reasonably occur by incorrect remedial activities as demonstrated by the Department's experience in reviewing these types of report, the requirement to submit a site investigation or remedial investigation report to the Department and pay the applicable review fees, is justified as a reasonable and cost-effective means to protect human health, safety and the environment.~~

The cost for Department review of a site investigation report and remedial investigation

report is $500 and $1,000, respectively. The submission of the site investigation report or remedial investigation report to the Department ensures that the closure and remediation were performed in accordance with this chapter and the relevant technical requirements of N.J.A.C. 7:26E. The Department's review allows an owner or operator to cure any deficiencies at the time of closure and may prevent the need to reinvestigate the underground storage tank system at a later date. Generally, a subsequent reinvestigation of the underground storage tank system to correct problems related to the closure will cost significantly more money than if the problems are addressed at the time of closure since the longer a discharge of hazardous substances remains undetected, the longer the contact with soil and ground water and the more chance for it to migrate making it more difficult and expensive to remediate.

The Department's experience in reviewing site investigation and remedial investigation reports evinces the need for Department review of these reports. The Department reviewed approximately 1,000 site investigation and remedial investigation reports during the last fiscal year. Fifty percent of the reports were approved as submitted and a no further action letter was issued. However, 50 percent were substantively deficient, that is, technical requirements were not satisfied and additional remediation activities were required by the Department. Approximately 75 percent of the deficient reports incorrectly stated that all the technical requirements of this chapter and N.J.A.C. 7:26E were satisfied and no further action was necessary.

The statistical data demonstrates that 40 percent of all site investigations or remedial investigations conducted on underground storage tank systems are technically deficient. Additionally, 40 percent of the site investigations or remedial investigations inappropriately proposed no further action when the site conditions or sampling data did not support closure. These errors would remain undiscovered if the submission of the reports were not required by the Department.

The potential environmental impact is not easily quantifiable due to a myriad of factors which may inhibit or exacerbate the migration of contamination through the environment.

However, these cases would be a continuing source of contamination which would affect soils and groundwater. The potential financial effect on an owner or operator is directly proportional to the amount of time the contamination remains unremediated and will significantly increase should contamination migrate to offsite property or contaminate groundwater or surface water. The potential costs of remediation can be estimated at $50,000 to a minimum of $250,000 (not including associated legal costs) if groundwater is contaminated.

Based on the potential environmental harm and financial costs that could reasonably occur by incorrect remedial activities as demonstrated by the Department's experience in reviewing these types of reports, the requirement to submit a site investigation or remedial investigation report to the Department and pay the applicable review fees, is justified as a reasonable and cost- effective means to protect human health, safety and the environment.

Subchapter 10

N.J.A.C. 7:14B-10 sets forth the activities for which an owner or operator is required to obtain a permit prior to installing, repairing or upgrading an underground storage tank system. The Federal rules do not require permits for these activities.

The Federal rules rely on a contractor to comply with accepted industry standards and to properly document the installation, repair or upgrade an underground storage tank system. The Department's experience demonstrates that a permitting process is necessary for the Department to meet the stated goals of the Underground Storage Tank program. Further, the installation, repair or upgrade is a critical point in the operational life of an underground storage tank system where an ounce of prevention is worth more than any quantity of cure.

The cost for the Department's review and response to a permit is $300 and is minimal when compared to the cost of system repair and environmental remediation. Installation of improper equipment could result in premature failure of the underground storage tank system which may necessitate replacement of equipment and the requirement for a site investigation to

determine whether a discharge has occurred. As previously stated, a site investigation will cost a minimum of $10,000 with additional expenditures if contamination is discovered.

The Department's permitting process is designed to incorporate a minimum amount of prevention at a critical time of the operational life of an underground storage tank system where a problem can be readily identified and corrected. The potential environmental and financial consequences of an improper installation, repair or upgrade support the Department's permitting process.

Subchapter 11

The intent of N.J.S.A. 58:10A-21 et seq. is to unify the regulations statewide. To this end, N.J.S.A. 58:10A-35 invalidates any underground storage tank rule that municipality had prior to the Act. In addition, it requires the Department to develop procedures so municipalities may develop ordinances regarding underground storage tanks. Subchapter 11 states the minimum requirements that municipalities must comply with before the Department will authorize a local ordinance regarding regulated underground storage tank systems. There is no equivalent section in the Federal regulations.

The result of standardization of the rules is uniformity of regulation and thus prevention of duplication of effort amongst the regulatory bodies throughout New Jersey and a decrease in the cost of government. Whereas previously each town had different requirements for tank owners, any enforcement action or regulatory oversight had to be performed by that town. Standardization allows the Department, the county health agencies and the local construction and health agencies to perform these functions. Any decision as to who would perform the function is predicated upon the immediacy of the problem and man-power considerations.

The standardization of the rules also decreases the costs of tank services to the underground storage tank owners and operators. Statewide uniformity allow contractors to act more efficiently due to the predictability of the requirements thus decreasing the time and effort required to perform a service. There is no corresponding requirement in the Federal rules.

Subchapter 12

~~N.J.A.C. 7:14B-12 sets forth a penalty schedule for noncompliance with any section of the underground storage tank rules as well as an appeal process. The Federal equivalent for authorizing penalties for underground storage tank violation is 42 U.S.C. 6992d. The different Federal and state authorities which each respective sovereign exercises its police powers precludes a meaningful basis for comparison. Therefore, no further analysis is required pursuant to Executive Order 27 (1994) and P.L. 1995, c.65.~~

N.J.A.C. 7:14B-12 sets forth a penalty schedule for noncompliance with any section of the underground storage tank rules, as well as providing the procedures for requesting hearings after denial or revocation of registration, permits, certifications for individuals and business firms, and denial of ordinance adoption.

The Federal government may assess civil administrative penalties in accordance with 42 U.S.C. § 6991e(d). This statute proviedes that the penalties may be $10,000 per day per violation for each underground storage tank in violation. In accordance with 42 U.S.C. §6991e(a), a penalty of $25,000 per day may be assessed for each day of a continuing violation of an order.

The penalty provisions of N.J.A.C. 7:14B-12 are similar in their structure to the Federal penalty scheme. In some cases the Department's penalties may be regarded as more stringent than the Federal program in that the maximum penalty which may be assessed is $50,000 per day per violation. The mandatory penalty provisions currently implemented by the Department were promulgated in accordance with requirements imposed by 1990 amendments to the New Jersey Water Pollution Control Act which requires the Department to impose, without discretion, mandatory minimum civil administrative penalties against a violator who has committed a serious violation or who has been determined to be a significant noncomplier. The Department believes that the financial effects of these mandatory penalties will be minimal. No additional expenses will be incurred during routine business activities; expenses incurred as a result of mandatory penalties will occur only where there are certain violations of the standards set forth

in these rules.

Subchapter 13

N.J.A.C. 7:14B-13 sets forth the requirements for certification of individuals and firms to perform services on regulated underground storage tank systems. The requirement for certification was mandated by P.L. 1991, c.123 (codified at N.J.S.A. 58:10A-24.1 through 24.6).

There is no designated certification program in the Federal rules. The Federal rules do allow certain underground storage tank activities be performed by a person certified by an implementing agency. (For example, see 40 C.F.R. 280.20(e)(2).) Therefore, the Department's certification program as mandated by state law, does not contain any standards or requirements that exceed Federal law or standards. Accordingly, no further analysis is required pursuant to Executive Order 27 (1994) and P.L. 1995, c.65.

Subchapter 14

N.J.A.C. 7:14B-14 sets forth the administrative requirements for an owner or operator to assert a claim of confidentiality for information submitted to the Department. Confidentiality procedures are available to any owner or operator that elects to request that the Department keep specified information, submitted to the Department, confidential and separate from public records.

The procedures set forth at N.J.A.C. 7:14B-14 are voluntary and can only be invoked in accordance with the proposed procedures. The application of the confidentiality procedures to the Underground Storage Tank program is not based on any Federal authority or comparable provision. Therefore, no further analysis is required pursuant to Executive Order 27 (1994) and P.L. 1995, c.65.

The Department's proposed new provisions at N.J.A.C. 7:14B-15, is ensuring consistency with the Federal rule at 40 CFR Part 280. The Federal financial responsibility requirements pertain to Federally regulated underground storage tanks containing petroleum, excluding tanks containing heating oil for on site consumption and underground chemical

storage tanks. However, New Jersey regulates many additional underground storage tanks including all Federally-regulated tanks, as well as some excluded by Federal law. The Department proposes to include all the underground storage tank systems regulated by New Jersey in it's financial assurance requirements because discharges from these tanks can, and do cause serious environmental damage. To ensure consistent, non-duplicative requirements, the Department is adopting the Federal rule in whole or in part. Owners and operators subject to Federal financial responsibility requirements who are currently using an approved financial mechanism pursuant to 40 CFR Part 280, may continue to use that same mechanism to satisfy both the State and Federal law.

Jobs Impact

The proposed readoption and amendments to N.J.A.C. 7:14B will have a positive impact on jobs in New Jersey. Implementation of the rules require the owners and operators of underground storage tanks to engage the services of people skilled in laboratory consulting and environmental technology.

~~The proposed readoption, the rule amendments and the new rule at subchapter 15 will have a positive impact on jobs in New Jersey.~~ In addition, the proposed new rule at N.J.A.C. 7:14B-15 will have a positive impact on jobs in New Jersey. The primary purpose of requiring financial assurance is to ensure that owners and operators have the financial ability to conduct needed remediation that they may not otherwise be able to afford. The Department anticipates some additional jobs related to remediations that will be conducted with financial assurance monies. Requiring the maintenance of financial mechanisms will provide funding for unexpected remediation costs may prevent small businesses that can not afford a costly remediation from going bankrupt that would result in lost jobs. Additional jobs are anticipated at insurance companies and banking institutions that issue commercial mechanisms.

Agricultural Impact

~~The requirements of this rule apply to all owners and operators of regulated tanks, including those on agricultural properties in New Jersey. The costs of complying with these regulations in general, and specifically the cost of obtaining and maintaining financial assurance, are the same for farmers as they are for other owners and operators of regulated tanks. The benefits of having adequate financial assurance in the event of a discharge from an underground storage tanks are also the same. Having the financial ability to address discharges will protect a farmer's land, family and assets.~~

The Department has evaluated this rulemaking to determine the nature and extent of the impact of the proposed readoption with amendments on the agricultural industry. In general, farmers are exempt from the requirements of the Underground Storage Tank Rules. N.JA.C. 7:14B-1.4(b) exempts farm tanks of 1,100 gallons or less used for storing motor fuel for noncommercial purposes. Thus, the proposed readoption with amendment of the Underground Storage Tank Rule will not have an impact an agriculture in New Jersey.

Regulatory Flexibility Analysis

The rule proposed for readoption with amendments will apply to all owners and operators of regulated underground storage tank systems that store hazardous substances. The Department estimates that over 7,000 underground storage tank system owners and operators are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and therefore will be affected by these rules. The types of small businesses to which the rules apply include independent gasoline service stations, fleet services, and heating oil companies. Many contractors and businesses certified pursuant to N.J.A.C. 7:14B-13 that perform services on underground storage tank systems are classified as small businesses. The Department estimates that 80 percent of the business firms that seek certification are small businesses.

The various compliance requirements and their associated costs are discussed in the Summary, Economic Impact and Federal Standards Analysis above.

~~To comply with the requirements of the rules proposed for readoption, small businesses will likely need to engage the services of consultants, professional engineers and certified~~

~~contractors. In addition, small businesses that are conducting remediation may need to employ professional workers such as environmental specialists, geologists, hydrogeologists, and analytical laboratory employees. Capital and operating costs of complying with underground storage tank system upgrade, operating and monitoring requirements will range from approximately $6,000 to $130,000 depending upon whether the owner or operator has already installed state of the art equipment and whether any existing equipment needs to be replaced. Costs of investigation and remediating a discharge is the same regardless of the size of the tank systems owner or operator's business. See the Economic Impact statement above.~~

In order to comply with the requirements of the proposed readoption with amendments, it is likely that small businesses will need to engage the services of consultants and/or professional engineers. The capital and operating costs of complying with the underground storage tank system upgrade, operating and monitoring requirements at N.J.A.C. 7:14B-4, 5 and 6 vary from approximately $3,000 to $1000,000 depending upon whether the owner or operator has already installed state of the art equipment and whether any existing equipment can be or needs to be replaced. The cost of complying with the amendments proposed at N.J.A.C. 7:14B-5.1 and 5.6, which require visual inspections of spill catchment basins, piping sumps and dispenser pans, and documentation that the visual inspections have been completed, are negligible since they merely require a visual inspection and entry of the results of the inspection in a ledger book. If a discharge of hazardous substances is suspected, the cost of complying with the remediation requirements at N.J.A.C. 7:14B-7, 8 and 9 could vary from $2000 for a site investigation to over $1,000,000 if a discharge is confirmed and ground water must be remediated. The costs of the certification requirements of N.J.A.C. 7:14B-13 are discussed in the Economic Impact above.

The financial responsibility assurance regulations impose the requirement for maintaining financial responsibility assurance, as well as record keeping and reporting requirements for large industry and small businesses alike. For example, an owner or operator of regulated underground storage tank systems must report the financial assurance mechanism being used to comply with proposed new N.J.A.C. 7:14B-15 in the New Jersey Underground Storage Tank Facility Certification Questionnaire required by N.J.A.C. 7:14B-2.2(d). In addition, proposed N.J.A.C. 7:14B-15.1(i) requires a financial institution that is issuing the financial assurance to provide

written notification to the Department of the expiration or cancellation of the financial assurance. There is no differentiation in the requirements by the size of a business other than the fact that a higher annual aggregate amount of assurance is needed for a business that owns a larger number of underground storage tanks. The rule does not exempt small businesses from all or part of its reporting, record keeping or other compliance requirements. A discharge of hazardous substances poses an endangerment to public health safety and welfare, and cannot be correlated to the size of the business.

To minimize adverse economic impact on small businesses, the rule offers a choice of mechanisms for obtaining financial responsibility assurance, some of which will be more economically feasible and attainable for small businesses.

The rule applies to all small businesses that own or operate regulated underground storage tanks. This includes all tanks which contain any quantity of any substance deemed hazardous on a list developed by the Department, any quantity of motor fuel stored for commercial use, and all heating oil tanks of 2001 gallons or more for on-site consumption at businesses or commercial operations.

EPA estimates that small businesses own or operate about 72 percent of the motor fuel outlets in the United States while only 24 to 41 percent of all underground storage tanks in general industry (excluding motor fuel outlets) meet the definition of small businesses. Applying those percentages to the more than 9,000 active facilities regulated by New Jersey law, nearly 7,000 small business are potentially affected by this rule.

Reporting requirements for this proposal are not burdensome. They include reporting the type and amount of financial assurance on a UST Facility Questionnaire already required by N.J.A.C. 7:14B-2. Although no other submissions are initially required, proof of a valid financial responsibility assurance mechanism is required upon request from an authorized person.

There should be no capital costs to obtain a financial assurance mechanism unless the owner and operator choose to use a risk retention group to demonstrate financial responsibility. Risk retention groups require "buy-in" to capitalize the group. Otherwise, annual premiums or payments for renewal of a mechanism will be the only costs involved.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)), to describe the impact of the proposed rule on the achievement of smart growth and implementation of New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the impact of the rules proposed for readoption and amendments on smart growth and implementation of the State Plan. The Governor's order on Smart Growth calls for conservation of New Jersey's natural resources, revitalization of its urban centers, and protection of the quality of the State's environment, while promoting beneficial economic growth, development and renewal. The proposed readoption and amendments support the principles of smart growth by encouraging the cost-efficient and timely cleanups of discharges from underground storage tanks, many of which are associated with brownfield sites that are then returned to beneficial use. Remediating discharges from underground storage tanks improves the quality of the State's natural resources. The goal of New Jersey's State Plan are very similar to the Governor's Smart Growth initiative. They include conserving New Jersey's natural resources, revitalizing its Urban Centers and protecting the quality of its environment. Thus, ensuring remediation of discharges from underground storage tanks through compliance with the proposed readoption with amendments of N.J.A.C. 7:14B also supports the goals of the State Plan.

Full text of the Underground Storage Tanks regulation proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:14B.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.3 Purpose

(a) This chapter is promulgated for the following purposes:

1. - 7. (No change.)

8. To implement the underground storage tank services certification requirements of the State Act; [and]

9. To establish financial responsibility assurance requirements for remediation of discharged hazardous substances and compensating third parties for bodily injury and property damage caused by a discharge from an underground storage tank system; and

[9.] 10. (No change in text.)

7:14B-1.6 Definitions

…

"Abandon in place" or "abandonment in place" means a tank rendered permanently nonoperational by following the procedures in American Petroleum Institute Recommended Practice 1604, "~~Removal and Disposal of Used~~ Closure of Underground Petroleum Storage Tanks," and left in the ground.

…

"Annual aggregate" means the total remediation costs incurred within a single year for all discharges from underground storage tank systems covered by a single financial instrument.

…

"Dispenser sump" means a liquid tight container designed to contain leaks from dispensers, pumps and associated fittings.

…

"Liquid" means any material which has a fluidity greater than that of 300 penetration asphalt when tested in accordance with the ASTM D-5-[78] 97 Test for Penetration [for] of Bituminous Materials. If not specified, liquid shall mean both combustible and noncombustible liquids.

…

"Occurrence" means a discharge from an underground storage tank system.

…

"Petroleum marketing facility" means a facility where petroleum is produced or refined, or a facility that sells or transfers petroleum to other petroleum marketers or to the public.

…

"Piping sump" means a liquid tight container designed to contain leaks from tank top fittings, pumps and associated equipment.

…

7:14B-1.7 Certifications

(a) (No change.)

(b) The person designated in (b)2 and (d) below shall sign and date the following certification or report:

1. - 2. (No change.)

(c) - (e) (No change.)

(f) Any individual certified as a Subsurface Evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who submits a cathodic protection permit application in accordance with N.J.A.C.7:14B-10.3(b)5, shall sign, date and submit to the Department the following certification:

"I certify under penalty of law that I have reviewed the plans for the proposed cathodic protection system and this system is appropriate for the underground storage tank system and fulfills the corrosion protection requirements of N.J.A.C. 7:14B-4. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(g) Any individual certified as a Subsurface Evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who conducts or directs activities and prepares documents in accordance with N.J.A.C. 7:14B-8.5 or 9.5, shall sign, date and submit to the Department the following certification:

"I certify under penalty of law that the work was performed under my oversight and I have reviewed the report and all attached documents, and the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(h) Any individual certified as a Subsurface Evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who prepares documents pursuant to N.J.A.C. 7:14B-8.5 or 9.5 for another certified Subsurface Evaluator who conducted or directed onsite activities, shall sign, date and submit to the Department the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this report and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I certify under penalty of law that the onsite work was performed by a certified subsurface evaluator. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

SUBCHAPTER 2. REGISTRATION REQUIREMENTS AND PROCEDURES

7:14B-2.2 Registration and certification procedures

(a) (No change.)

(b) All registration and certification forms shall be obtained from and accurately completed, signed, dated and returned to the address below:

[Industrial Site Evaluation Element
Division of Responsible Party Site Remediation
PO Box 028
401 E. State St.
Trenton, NJ 08625-0028
Attn: UST Registration/Certification]

New Jersey Department of Environmental Protection
Division of Remediation Management and Response
Bureau of Fund Management, Compliance & Recovery
PO Box 028
401 East State Street
Trenton, NJ 08625-0028
Attn: Registration and Billing Unit

7:14B-2.7 Denial or revocation of registration

(a) - (b) (No change.)

(c) The Department shall inform an owner or operator of the denial or revocation of registration by Notice of Intent to Deny Registration or Notice of Intent to Revoke Registration. This Notice shall include:

1. The specific grounds for denial of issuance as set forth in N.J.A.C. 7:14B-2.[8]7(a) above; or

2. The specific grounds for revocation as set forth in N.J.A.C. 7:14B-2.[8]7(b) above.

(d) - (f) (No change.)

SUBCHAPTER 4. UNDERGROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION AND INSTALLATION

7:14B-4.1 Performance standards for new underground storage tank systems

(a) – (d) (No change.)

(e) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)1i above:

1. Underwriters Laboratories Standard 1316, "[Standard for] Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures" (obtained from: 333 Pfingsten Road, Northbrook, IL 60062);

2. Underwriters Laboratories of Canada CAN4-S615-[M83] 1998, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products" (obtained from: 7 Crouse Road, [Scarborough] Toronto, Ontario M1R 3A9, Canada); or

3. American Society of Testing and Materials Standard D4021-[86], "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks" (obtained from: [1916 Race Street, Philadelphia, PA 19103] 100 Barr Harbor Drive, W. Conshohocken, Pa 19428-2959).

(f) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)1ii:

1. (No change.)

2. [Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coating and Galvanic System"; or] Underwriters Laboratories of Canada CAN/UCL-S603-1992, “Underground Steel Tanks”; CAN/UCL-G603.1 1992; “Galvanic Corrosion Protection Systems for Underground Tanks"; and CAN4-S631-M1984, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic System”; or

3. NACE International Standard RP-02-[85]95, RP0285-2002, "Corrosion Control of [External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage]Underground Storage Tank Systems by Cathodic Protection," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" (obtained from: 1440 South Creek Drive, Houston, TX 77084-4906).

(g) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks," or the Association for Composite Tanks ACT-100,

"Specification for the Fabrication of FRP Clad Underground Storage Tanks," incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)1iii above.

(h) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)2i above:

1. Underwriters Laboratories Subject 971, "[UL Listed Non-Metal Pipe] Non-Metallic Underground Piping for Flammable Liquids";

2. Underwriters Laboratories Standard 567, "Pipe Connectors for [Flammable and Combustible] Petroleum Products and LP Gas";

3. Underwriters Laboratories of Canada Guide [ULC-107, "Glass fiber reinforced Plastic Pipe and Fittings for Flammable Liquids"] ORD-107.7 Glass-fibre Reinforced Plastic Pipes and Fittings"; or

4. NACE International Standard RP-01-[69]95 RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

(i) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)2ii above:

1. (No change.)

2. American Petroleum Institute Publication 1615, "Installation of Underground Storage-Petroleum-Systems" (obtained from [1220L Street, Northwest Washington, D.C. 20005] Global Engineering Documents at 15 Inverness Way East, Englewood Colorado 80122.)

3. (No change.)

(i) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)2ii above:

1. (No change.)

2. American Petroleum Institute Publications 1615, "Installation of Underground Storage Petroleum Storage Systems" (obtained from [1220L Street, Northwest Washington, D.C. 20005] Global Engineering Documents at 15 Inverness Way East, Englewood Colorado 80122.)

3. – 4. (No change.)

(j) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)2iii above:

1. (No change.)

2. NACE International Standard RP-01-[69]95, RP0169-96, "Control of External Corrosion on Underground or [s] Submerged Metallic Piping Systems."

(k) The tank and piping installation practices and procedures described in the following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)4 above:

1. (No change.)

2. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems" (obtained from P.O. Box 2380, Tulsa, OK 74101-2380)

3. American National Standards Institute Standard B31.3, Petroleum [Refinery] Process Piping", and American National Standards Institute Standard B31.4,, "Liquid [Petroleum] Transportation [Piping] Systems for Hydrocarbons, Liquid Petroleum, Liquid Petroleum Gas, and Anhydrous Ammonia and Alcohols. (obtained from[: 11 West 42nd Street, 13th Floor, New York, NY, 10036] Global Engineering Documents at 15 Inverness Way East, Englewood Colorado 80122.)

(l) (No change.)

7:14B-4.2 Upgrading of existing underground storage tank systems

(a) All existing underground storage tank systems shall comply with one of the following requirements [not later than December 22, 1998]:

1. – 3. (No change.)

(b) – (d) (No change.)

(e) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with the requirements of (b) above:

1. American Petroleum Institute Publication 1631, "[Recommended Practice for the] Interior Lining and Periodic Inspection of [Existing Steel] Underground Storage Tanks";

2. (No change.)

3. NACE International Standard RP-02-[8]95 RP0285-2002, "[Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage

Systems] Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," and Underwriters Laboratories Standard 58, "Standard for Steel underground storage tanks for Flammable and Combustable Liquids" (obtained from: 144 South Creek Drive, Houston, TX 77084-4906). or

4. (No change.)

(f) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with the requirements of (c) above:

1. – 3. (No change.)

4. NACE International Standard RP-01-[69]95 RP0169-96 "Control of External Corrosion on Underground or [s]Submerged Metallic Piping Systems."

SUBCHAPTER 5. GENERAL OPERATING REQUIREMENTS

7:14B-5.1

(a) – (c) (No change.)

(d) In order to ensure proper operation of spill containment equipment, the owner and operator shall:

1. Keep spill catchment basins, dispenser sumps and piping sumps clean of product, water and debris;

2. Visually inspect spill catchment basins before every delivery and once every 30 days, and properly dispose of any accumulation of debris and liquid collected. The visual inspection shall include a check for evidence of cracks, holes, loose fittings or any other deficiency which may compromise the integrity of the spill containment equipment.

3. Ensure deficient equipment is repaired or replaced. Repairs and installation of new equipment shall be in compliance with N.J.A.C. 7:14B-4.1(a)3i, 4.1 (n), 4.2(d), and 5.4; and

4. Not accept product delivery to any tank if the spill catchment basin contains product, water or debris.

7:14B-5.2 Operation and maintenance of corrosion protection

(a) All owners and operators of metallic underground storage tank systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the underground storage tank system is used to store regulated substances:

1. (No change.)

2. All underground storage tank systems equipped with cathodic protection systems shall be inspected for proper operation by a Cathodic Protection Tester or Cathodic Protection Specialist certified pursuant to N.J.A.C. 7:14B-13 in accordance with the following requirements:

i. (No change.)

ii. The criteria that are used to determine that cathodic protection is adequate as required by this section shall be in accordance with a code of practice developed by a nationally recognized association. For example, NACE International Standard RP-02-[85] 95 RP0285-2002, "Corrosion Control of [External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage] Underground Storage Tank Systems by Cathodic Protection" may be used to comply with this requirement.

3. - 4. (No change.)

7:14B-5.4 Repairs

(a) - (b) (No change.)

(c) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with the requirements of (a) above:

1. - 2. (No change.)

3. American Petroleum Institute Publication 1631, "[Recommended Practice for the] Interior Lining and Periodic Inspection of [Existing Steel] Underground Storage Tanks"; or

4. (No change.)

7:14B-5.5 Release response plan

(a) The owner or operator of an underground storage tank system shall prepare a release response plan which includes the following information:

1. The emergency telephone numbers of the local fire department, local health department, Department of Environmental Protection Hotline [(609) 292-7172)] 877 WARN DEP or 877-927-6337, and any other appropriate local or State agencies;

2. - 4. (No change.)

(b) - (c) (No change.)

7:14B-5.6 Recordkeeping

(a) Owners and operators shall maintain the following information until the owner of operator receives the Department's written permission to discard the records pursuant to (c) below:

1. –5. (No change.)

6. Documentation of compliance with N.J.A.C. 7:14B-5.1(d).

SUBCHAPTER 6. RELEASE DETECTION

7:14B-6.1 General requirements for all underground storage tank systems

(a) – (c) (No change.)

(d) [Underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. but not 42 U.S.C.§§6991 et seq. shall begin release detection monitoring in accordance with the performance standards of N.J.A.C. 7:14B-6.5 and 6.6 no later than December 22, 1998.

(e) Any] Each owner and operator of any underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq., but not 42 U.S.C.§§6991 et seq., that cannot apply a method of release detection with the requirements of this subchapter [by December 22, 1998,] shall complete the closure requirements of N.J.A.C. 7:14B-9 [by that date] pursuant to a closure schedule that the Department has approved.

7:14B-6.2 Requirements for underground storage tank systems containing petroleum products and waste oil

(a) Owners and operators of petroleum underground storage tank systems shall provide release detection for tanks and piping [as follows] by:

1. [Tanks shall be monitored] Monitoring tanks at least every 30 calendar days for releases using one of the methods listed in N.J.A.C. 7:14B-6.5(a)4 through 8 except that:

i. Underground storage tank systems that meet the performance standards in N.J.A.C. 7:14B-4.1 or 4.2, and the monthly inventory control requirements in N.J.A.C. 7:14B-6.5(a)1, (a)2, or (b) may use tank tightness testing (conducted in accordance with N.J.A.C. 7:14B-6.5(a)3) [at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded under N.J.A.C. 7:14B-4.2, whichever is later]; and

[ii. Underground storage tank systems that do not meet the performance standards in N.J.A.C. 7:14B-4.1 or 4.2 may use monthly inventory controls (conducted in accordance with N.J.A.C. 7:14B-6.5(a)1 or 2) and annual tank tightness testing (conducted in accordance with N.J.A.C. 7:14B-6.5(a)3) until December 22, 1998 when the tank must be upgraded under N.J.A.C. 7:14B-4.2 or permanently closed under N.J.A.C. 7:14B-9; and

iii] ii. Tanks with capacity of 550 gallons or less may use weekly tank gauging conducted in accordance with N.J.A.C. 7:14B-6.5(a)2.

(b) (No change.)

7:14B-6.3 Requirements for underground storage tank systems containing hazardous substances other than petroleum products and waste oil

(a) Owners and operators of underground storage tank systems containing hazardous substances other than petroleum products and waste oil shall provide release detection that meets the following requirements:

1. Release detection at existing underground storage tank systems shall meet the requirements for petroleum underground storage tank systems in N.J.A.C. 7:14B-6.2. [By December 22, 1998, a] All existing underground storage tank systems containing hazardous substances other than petroleum products and waste oil shall meet the release detection requirements for new systems in (a)2 below.

2. – 3. (No change.)

SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

7:14B-7.3 Confirmed discharges

(a) Any person, including, but not limited to, the owner or operator of an underground storage tank system or individual certified pursuant to N.J.A.C. 7:14B-13 hired to install, remove, test or perform a subsurface evaluation on an underground storage tank system, shall, upon confirming a discharge, immediately report the discharge to the appropriate local health agency in accordance with local requirements, and to the Department's Environmental Action Hotline [(609) 292-7172] 877-927-6337. Discharges may be confirmed on the basis of the following:

1. - 5. (No change.)

(e) (No change.)

SUBCHAPTER 8. REMEDIATION ACTIVITIES

7:14B-8.6 Applicable remediation standards

(a) The owner or operator of a facility which has discharged hazardous substances shall remediate [ground water and/or soils that contribute to a violation of the Ground Water Quality Standards, N.J.A.C. 7:9-6, Surface Water Quality Standards, N.J.A.C. 7:9-4, or any other applicable remediation standard, or that shall result in vapor hazards] the discharge to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E.

[(b) The owner or operator of a facility which has discharged hazardous substances shall submit a proposal, contained within the remedial investigation report or the remedial action report, to the Department of the remediation levels to be achieved for each contaminated

medium. The proposal shall detail the site specific circumstances and technical rationale for the remediation goals.]

SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

7:14B-9.1 Out-of-service underground storage tank systems

(a) The owner or operator of an underground storage tank system which is out-of-service shall:

1. – 4. (No change.)

5. Install spill and overfill prevention and corrosion protection in accordance with the requirements of N.J.A.C. 7:14B-4.1 and 4.2 for systems which do not have these[, by December 22, 1998, or when the underground storage tank system is put back into service, whichever is later].

(b) The owner or operator of an underground storage tank system which is out of service for a period greater than three months shall follow the guidelines in the American Petroleum Institute [Bulletin No.] Publication 1604, "[Removal and Disposal of Used] Closure of Underground Petroleum Storage Tanks" titled "Temporarily Out of Service," incorporated herein by reference, as amended and supplemented, no later than the end of the third month in which the system is out of service.

(c) – (e) (No change.)

SUBCHAPTER 10. PERMITTING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-10.1 Permit requirements

(a) (No change.)

(b) An owner or operator of an existing or proposed underground storage tank system need not apply for a permit with the Department when:

1. - 2. (No change.)

3. The only portion of the tank system being installed is the product piping and the piping is protected from corrosion in accordance with N.J.A.C. 7:14B-4.1(a) and is secondarily contained and interstitially monitored in accordance with N.J.A.C. 7:14B-6.4(a)2[, or];

4. The underground storage tank and piping being installed, upgraded or modified is or shall be protected from corrosion, spills and overfills in accordance with N.J.A.C. 7:14B-4.1(a) or 4.2 and the tank is secondarily contained and interstitially monitored in accordance with N.J.A.C. 7:14B-6.4(a)2 and the piping meets the requirements of (b)2i through v above[.] ; or

5. The only portion of the underground storage tank system being installed is a spill catchment basin used for spill prevention equipment, and the underground storage tank system is already protected from corrosion and overfills in accordance with N.J.A.C. 7:14B-4.1(a) or 4.2 and has release detection in accordance with N.J.A.C. 7:14B-6. Prior to installation of the new spill catchment basins, the owner or operator shall investigate the ground beneath and around the fill ports for releases. The owner or operator shall report all

releases and conduct remediation in accordance with the requirements of N.J.A.C. 7:14B-7 and 8.

(c) – (f) (No change.)

7:14B-10.2 Permits required in wellhead protection areas

(a) (No change.)

(b) Prior to submitting a permit application for the upgrade or substantial modification of underground storage tank systems in wellhead protection areas, a site investigation of the underground storage tank system shall be performed in accordance with the requirements of N.J.A.C. 7:26E.

1. If the site investigation report indicates that a discharge has occurred, the Department shall not issue a permit for the upgrade of the underground storage tank system unless owner or operator:

i. Notifies the Department's Environmental Action Hotline at [(609) 292-7172] 877 WARN DEP or 877-927-6337 of the discharge;

ii. - iii. (No change.)

SUBCHAPTER 15. FINANCIAL RESPONSIBILITY REQUIREMENTS

7:14B-15.1 Applicability and general requirements

(a) This subchapter sets forth financial responsibility assurance requirements for owners and operators of underground storage tank systems for the purpose of remediation and for compensating third parties for bodily injury and property damage as a result of a discharge from an underground storage tank system.

(b) Owners and operators of Federally regulated systems subject to 40 C.F.R. Part 280 Subpart H shall comply with this subchapter by maintaining financial assurance pursuant to 40 C.F.R. Part 280 Subpart H incorporated, in its entirety, by reference.

(c) Within 120 days after (the effective date of this rule), the owner or operator of an underground storage tank system subject to the requirements of N.J.A.C. 7:14B, not covered by (b) above, shall comply with this subchapter for the amounts listed in N.J.A.C. 7:14-15.2 by maintaining financial assurance pursuant to USEPA's Financial Responsibility Regulations at 40 CFR 280 Part H incorporated by reference, with the noted exclusions at N.J.A.C. 7:14B-15.3(c).

(d) State and Federal government entities whose debts and liabilities are the debts and liabilities of the State of New Jersey or the United States are exempt from the requirements of this subchapter.

(e) If the owner and operator of an underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both the owner and operator are responsible in the event of noncompliance.

(f) The owner and operator may use separate mechanisms to satisfy the requirements of N.J.A.C. 7:14B-15.2 for different underground storage tank systems; however, the annual aggregate required shall be based on the number of tanks covered by each separate mechanism.

(g) The owner and operator is no longer required to maintain financial responsibility assurance for any underground storage tank system when the Department has provided the owner or operator with the following:

1. A no further action letter for the closure of the underground storage tank system; and

2. Notice that each third-party claim for damages as a result of a discharge from the underground storage tank system has been resolved pursuant to 40 C.F.R. 280.112 as adopted by reference at N.J.A.C. 7:14B-15.3, if one has been filed.

(h) The owner and operator shall identify the financial assurance mechanism being used to comply with this subchapter on the New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.2(d)5 and shall maintain evidence of financial assurance at the site and at the owner or operator's place of business. An owner or operator shall submit to the Department evidence of financial assurance with any supporting documentation, pursuant to a request by the Department.

(i) Within 30 calendar days after the cancellation or expiration of any form of financial assurance established to meet the requirements of this chapter, the issuing financial institution shall notify the Department in writing of the expiration or cancellation. The financial institution shall include in the notification the name of the insured policy holder, the policy number as applicable and the address of all sites covered by the financial mechanism. The written notification shall be sent to the address below:

New Jersey Department of Environmental Protection
Division of Remediation Management and Response
Bureau of Fund Management, Compliance & Recovery
PO Box 028
401 East State Street
Trenton, NJ 08625-0028
Attn: Registration and Billing Unit

7:14B-15.2 Amount and scope of required financial responsibility

(a) Owners and operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the per-occurrence amounts as follows:

1. For petroleum underground storage tank systems located at petroleum marketing facilities, or facilities that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: $1,000,000;

2. For all other petroleum underground storage tanks: $500,000; and

3. For underground storage tanks systems containing hazardous substances other than petroleum: $1,000,000.

(b) Owners or operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the annual aggregate amounts as follows:

1. For 1 to 100 underground storage tanks: $1,000,000; and

2. For 101 or more underground storage tanks: $2,000,000.

(c) Owners and operators shall review the amount of per-occurrence and aggregate assurance needed whenever they acquire or install additional underground storage tanks to ensure the amount of financial responsibility assurance required at (a) and (b) above are maintained.

(d) If an adjustment in the amount of financial responsibility assurance is required pursuant to (c) above, the owner and operator shall demonstrate the adjusted amount within 30 calendar days after the tank acquisition or installation by submitting to the Department an amended New Jersey Underground Storage Tank Facility Certification Questionnaire in accordance with N.J.A.C. 7:14B-2.4.

7:14B-15.3 Incorporation of the Code of Federal Regulations by Reference

(a) Unless specifically excluded by these rules, when a provision of the Code of Federal Regulations (C.F.R.) is incorporated by reference into this rule, all notes, comments, appendices, diagrams, tables, forms, figures, and publications are also incorporated by reference.

(b) Owners and operators of Federally regulated underground storage tank systems subject to 40 C.F.R. Part 280 Subpart H shall comply with this subchapter by maintaining financial assurance pursuant to 40 C.F.R. Part 280 Subpart H incorporated, in its entirety, by reference into this rule.

(c) Owners and operators of State regulated underground storage tank systems subject to the requirements of N.J.A.C. 7:14B, but not covered by (b) above, shall comply with this chapter for the amounts listed in N.J.A.C. 7:14-15.2 by complying with USEPA's Financial Responsibility Regulations at 40 CFR 280 Part H incorporated by reference into this rule with the following noted exclusions:

1. 40 CFR 280.98, Surety Bond;

2. 40 CFR 280.100, Use of State required mechanism;

3. 40 CFR 280.101, State fund of other State assurance; and

4. 40 CFR 280.106(d), Local government guarantee, Local Government Guarantee With Standby Trust Made by a State.

(d) For the purposes of this subchapter, when the term, "name of State" appears in the Federal rule, it shall be replaced with the term "New Jersey"; when the term "State implementing agency" appears in the Federal rule, it shall be replaced with the term "Department of Environmental Protection"; when the term "Director" or "Director of the implementing agency" appears in the Federal rule, it shall be replaced with the term "DEP Commissioner."

(e) Prospective incorporation by reference means the ongoing process, beginning (the adoption date) whereby all provisions of regulations incorporated into this subchapter from the Federal regulations at 40 CFR 280 Part H are continually automatically updated in order to maintain consistency with the most current Federal rules. Thus, any supplements, amendments, and any other rule changes including, without limitation, repeals or stays that affect the meaning or operational status of a Federal rule, brought about by either judicial or administrative action and adopted or otherwise noticed by U.S. Environmental Protection Agency in the Federal Register, shall simultaneously amend this subchapter so this subchapter has the same meaning and status as its Federal counterpart.

(f) Provisions of 40 C.F.R. Part 280 Subpart H incorporated by reference are prospective and all internal references contained therein are also incorporated prospectively for the purposes of that provision, unless otherwise noted. Each internal reference to the Federal register shall be interpreted to include, in addition to the Federal citation, any changes, additions and deletions made to that citation by N.J.A.C. 7:14B-15.

(g) Provisions of 40 C.F.R. Part 280 Subpart H that are excluded from incorporation by reference in these rules are excluded in their entirety, unless otherwise specified. If there is a cross reference to a Federal citation that was specifically excluded from incorporation, the cross referenced citation is not incorporated by virtue of the cross reference. Provisions that have been excluded from incorporation by reference are also excluded from the process of prospective incorporation by reference.

(h) Nothing in these provisions incorporated by reference from the Federal register shall affect the Department's authority to enforce statutes or rules, permits or orders administered or issued by the Commissioner.

(i) New Federal rules, amendments, supplements and other changes at 40 CFR 280 Part H brought about through administrative or judicial action adopted or otherwise noticed by

USEPA in the Federal Register shall be automatically incorporated through the prospective incorporation process in N.J.A.C. 7:14B.

(j) New Federal rules, amendments, supplements and other changes at 40 CFR 280 Part H brought about through administrative or judicial action adopted or otherwise noticed in the Federal Register by USEPA after January 26, 1998 but prior to (the effective date of this rule) shall be prospectively incorporated by reference and shall be effective on (the effective date of this rule) and operative on (effective date of this rule plus 90 days); or on the operative date cited by USEPA in the relevant Federal Register Notice, whichever is later, unless the Department publishes a notice of proposal repealing the adoption of the Federal rule in New Jersey in whole or in part, and/or proposes to otherwise amend the affected State rules.

(k) On or after (effective date of this rule), new Federal rules, amendments, supplements and other changes brought about through administrative or judicial action and adopted or otherwise noticed by USEPA in the Federal Register automatically incorporated through the prospective incorporation by reference process shall be effective upon publication in the Federal Register and operative on the date cited by USEPA in the relevant Federal Register Notice, unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

7:14B-15.4 Document availability

(a) Copies of the 40 CFR 280 Part H as adopted and incorporated by reference herein are available for review. Publications incorporated by reference within the Code of Federal Regulations as listed at 40 CFR 280 Part H, or the most currently available version, are also available for review. The Federal rule can be accessed through a hyperlink provided on the Department's internet web page at www.state.nj.us/ dep/srp/regs/ust. These publications may also be reviewed by contacting the Department at:

New Jersey Department of Environmental Protection

Site Remediation Program
PO Box 028
Trenton, NJ 08625-0028
Telephone: (609) 633-1408

(b) Copies of 40 CFR 280 Part H as adopted and incorporated by reference herein, may be purchased from the following sources:

U.S. Government Printing Office
Superintendent of Documents
Mail Stop: SCOP
Washington DC 20402-9328

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, NY 10278-0081

U.S. Government Printing Office Bookstore
Robert Morris Building
100 North 17th Street
Philadelphia, PA 19103

(c) Copies of 40 CFR 280 Part H as adopted and incorporated by reference herein, are available for review at the following public libraries:

New Jersey State Library
PO Box 520, 185 West State Street
Trenton, NJ 08625-0520

Newark Public Library

5 Washington Street

Newark, NJ 07101

(d) The Office of the Federal Register, a component of the National Archives and Record Administration, has a web-site at www.nara.gov/fedreg which shows a current listing of files available for public inspection, Federal Registers as well as the Code of the Federal Regulations.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994), permits the public to understand accurately and plainly the purposes and expected consequences of these this proposed readoption with new rules and amendments. I hereby authorize the proposal of this readoption with new rules and amendments.

Date:_____ _____

Bradley M. Campbell, Commissioner

Department of Environmental Protection